

# JUDAISM

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## MANAGING BIRTH, LIFE, AND DEATH

Ben Zion Bokser

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## THE VATICAN AND THE JEWS: CYNICISM AND INDIFFERENCE

Judah L. Graubart

## FREUD AS A JEW

Leon Vogel

Robert Gordis

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JUDAISM, conceived as a free and non-partisan organ, is dedicated to the creative discussion and exposition of the religious, moral and philosophical concepts of Judaism and their relevance to the problems of modern society. Through an exploration of the meaning and needs of the Jewish experience, it hopes to widen the channels of communication between Jews and to affirm Jewish verity and vitality to the world at large.

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## STATEMENT OF PURPOSE

In increasing measure, modern men are turning again to the quest for a world-view on the issues that are timeless—the meaning of life, the challenge of death, the purpose of suffering, the significance of the individual, his relation to society, and the goal of history. In order to advance this enterprise of spiritual discovery of our time this Journal has been projected. It will be primarily concerned with the philosophy, ethics, and religion of Judaism as a factor in the contemporary world . . .

We are committed to the proposition that Judaism has positive value today for Jews and for the world . . . At the same time, we disassociate ourselves from the dangerous tendency toward the hardening of party lines on the contemporary Jewish scene . . . The members of the Board of Editors belong to every school of Jewish life or to none. The trends popularly referred to as Orthodox, Conservatism, Reform, Reconstructionism, as well as others that as yet have no specific names, have their advocates among us, though no institution or movement is officially represented . . . Undoubtedly, our differences will find expression in these pages, but we shall be at one in opposing the dogmatism which takes for granted that one's own particular standpoint has a monopoly on truth and the authoritarianism which would suppress any contrary point of view.

*Judaism* will be dedicated to the quest for truth in the spirit of freedom. Our columns will be open to anyone who has something significant to say and the ability to say it well. New and unconventional interpretations, whatever their standpoint, will be welcomed from every source, for we share the conviction of the Talmud that "Both these and the others are the words of the living God."—From the introductory article by Robert Gordis, "Toward a Renaissance of Judaism" in Vol. I, No. 1.



## *The First Reader*

### THE IMPLICATIONS OF THE EXTENSIVE ADVANCES

being made today by bio-medical research are only vaguely comprehended by the general public. On the other hand, among ethicists, both secular and religious, there is a growing concern for the underlying assumptions and the potential conclusions of this type of activity. The extent of this interest was brought home vividly to us when three manuscripts arrived on our desk, almost at the same time, all dealing with this subject and, thus, constituting a "mini-symposium." The authors—two rabbis and a research scientist—are deeply committed to ethical and religious values, yet there is astonishingly little overlapping among them.

*Ben Zion Bokser*, in his article, "Problems in Bio-Medical Ethics: A Jewish Perspective," stresses the perils inherent in man's growing ability and apparent willingness to control and manipulate life and to destroy those forms which he finds objectionable. *Mark H. Elovitz*, in his paper "The Bio-Medical Challenge to Law and Morality," concentrates upon the far-reaching problems posed by man's growing capacity today to control life at its inception and before.

Even more significant is the difference in approach between the two writers. Rabbi Elovitz, convinced that we are entering into a new era totally different from the past, emphasizes the bewildering array of complex ethical questions that will confront us. He does not presume to offer answers to them, but suggests the need for great caution with regard to this type of research. Rabbi Bokser, speaking from the stance of Jewish tradition, sets forth what he regards as the authoritative response of Judaism to these new, exciting—and disturbing—frontiers of scientific experimentation and social practice.

Another highly controversial area today is euthanasia, or "mercy killing." In "The Paradox of Euthanasia," *Teodoro Forcht Dagi* examines this question from the medical point of view, but takes into account the extremely high evaluation upon life and its preservation that is characteristic of the Jewish tradition.

These three papers serve to focus attention on a vast, potential revolution which is already being actualized in our lives.

The issue of Catholic-Jewish relations, always present, came to wide public attention with the recent publication by the Vatican of "Guidelines" in this area. Reactions in the Jewish community have varied from the mildly enthusiastic to the strongly negative. In his paper, "The Vatican and the Jews: Cynicism and Indifference," *Judah L. Graubart*

suggests why the sense of disappointment with this long-delayed statement is so general.

It is, of course, entirely natural that a reaction should set in after Freud had occupied a position of central importance, not only in the mind-sciences but in Western culture generally for several decades. Contemporary psychiatry and psychology, which owe a tremendous debt to Sigmund Freud, are today no longer as overwhelmingly "Freudian" as they were in the past. His impact is also felt less strongly in literature and the social sciences, although it is by no means lacking. Undoubtedly, the "pendulum syndrome" operates here as well as everywhere else, and a truer perception of his seminal role will ultimately emerge.

Two papers in this issue concern themselves with evaluating Freud's Jewishness. *Léon Vogel*, in his paper, "Freud and Judaism: An Analysis in the Light of His Correspondence," comes to a negative conclusion, arguing that Freud was essentially alienated from his Jewish roots and had few Jewish interests. *Robert Gordis*, in his paper, "The Two Faces of Freud," holds a contrary view. He maintains that, not merely on the conscious level, but perhaps more significantly sub-consciously, Freud was deeply Jewish. The evidence, which has not been adequately evaluated, is drawn from biographical data that, at first blush, does not seem to be directly related to the theme.

Perhaps the difference between the two papers is that of the varying judgments of the pessimist and the optimist with regard to a glass half filled with whiskey!

In a closely reasoned paper, "Ethics in Jewish Law," *Eugene B. Korn* argues for the autonomy of the moral law, that is to say, that the validity of moral standards is not dependent upon the claim that they emanate from God but is inherent in their very nature. From this premise, he proceeds to the position that the ritual laws of the halakhah, being fundamentally different in kind from ethical norms, derive their authority from their source in God and are, therefore, binding upon Jews, without being subject to the analysis and critique of reason.

Recognizing the difficulties involved in this claim, the author then declares that it is imperative to demonstrate, to one's own personal satisfaction at least, that the halakhah *is* in conformity with moral principles. He points out that the Rabbis of the Talmudic period did not hesitate to interpret old laws and enact new ones in order to bring the halakhah into conformity with the moral good. The paper is a valuable contribution to the ongoing discussion on the character of Jewish law and its role in modern life.

The 19th century German philosopher, Friedrich Hegel, can scarcely be described as the major star in the intellectual heavens today. Nonetheless, his place in the history of philosophy is secure. In his own age he was perhaps the dominant influence in European philosophic thought. Jews, in particular, felt his impact very strongly. Figures as diverse as Karl Marx and Nahman Krochmal reacted to that influence in constructing their own radically different world views.

In his attitude toward Jews, Hegel, in the best tradition of German thought, delivered himself of several anti-Jewish pronouncements, which were discounted or re-interpreted by his Jewish disciples. In "Hegel and Judaism," *Lawrence S. Stepanovich*, a Christian scholar, examines the evidence with regard to Hegel's views on Jews and Judaism. He concludes that the charge of anti-Semitism is sustained by the record.

*Phillip Sigal* presents a challenging thesis, in his paper, "Elements of Male Chauvinism in Classical Halakhah." He points out that traditional Jewish law accords a position of primacy to the male and relegates the female to a secondary role in the areas of family law and ritual. In view of the markedly changed position of women in modern society, he argues forcefully that the time has come for equalizing the position of women in marriage and divorce, in officiating at services, being counted to the minyan, in reading the Purim Megillah, and in participating in other rituals.

One of the burning issues in this area is the discussion of the legitimacy and desirability of ordaining women for the rabbinate, a step already taken by Reform and Reconstructionism. The widespread notion that, in the past, women were excluded from the study of Torah is refuted by the evidence collected by *Anne Goldfeld* in her paper, "Women As Sources of Torah." It suggests that, despite the many disabilities under which they labored, there were women who were able to achieve competence, and even distinction, in the study and interpretation of Jewish traditional sources.

R. G.

# *Problems in Bio-Medical Ethics:*

## *A Jewish Perspective*

BEN ZION BOKSER

KNOWLEDGE ENGENDERS POWER, AND POWER IS morally ambivalent; it may be used for good as well as for evil. The greatest triumph of physical science was the unravelling of the secret hidden in the interior of the atom. It has given man hitherto undreamt of power with which to serve the world, but this very power has been turned into a tool of war, and in the end it may well blow up our world. Industrial technology has enabled us to produce endless goods that have enhanced the quality of life, but we have recently learned, to our sorrow, that it has also polluted our environment and that, unless we bring it under rigid control, it will make our world uninhabitable to man and beast alike. We stand today at the threshold of a biological revolution perhaps even more far-reaching than the revolution wrought by the triumphs of the physical sciences. We can diagnose the genetic quality of an unborn child and predict, with reasonable accuracy, its biological fitness for life. We may now predict, and we may soon be able to control, the sex of a child before birth. Techniques of freezing living substances and artificial insemination enable us to store sperm and use it to propagate new life. Through the choice of high quality sperm we may be able to condition the emergent species of the future. Indeed, scientists have projected the possibility of effecting the essence of conception in a test tube, thereby enabling us to plan the kind of human race deemed desirable. We could put a halt to the propagation of the inferior, and bring to birth a new race of supermen. And, even with the human race as it is, we have the means of inaugurating extensive chemical and other controls which will recondition human behavior patterns toward desired goals.

There are religious cults which frown on any scientific interference in the natural processes acting in human life. Thus, they forbid medicine, especially surgery or blood transfusion, as an infringement on God's authority, Whose will alone should remain sovereign in the determination of life. There must have been some such sensibility in Judaism, or else the Talmud would not have felt the need to cite a text-proof that it is permissible for the physician to pursue the healing art (*Baba Kama* 85a). The view which prevailed in Judaism, however, overcame such sensibility and it was ruled that the physician not only may, but is even obligated to heal, and the sick are likewise obligated to seek the minis-

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tration of a physician. This is well summed up in the code of Rabbi Joseph Karo (*Shulhan Arukh, Yoreh Deah* 336):

The Torah gave the physician the permission to heal. Moreover, his doing so fulfills a precept and it is included in the mandate to save life; and if he should withhold his services it is as though he committed bloodshed.

The legitimization of medical science, however, does not represent a *carte blanche* for all scientific manipulation of the life process. It is obvious that we need criteria to help us determine the equity of the far-reaching projections of the medical and biological sciences in controlling and directing the life process. The newer biological techniques, especially, raise serious moral doubts as to whether they really fall within the physician's mandate.

We need some ethical determinants to guide the direction which the new biology is to take in its functioning applications. How shall we define the good that is to be pursued and the evil that is to be avoided? Without going into the complexities of this question, we may define the good as that which conforms to the basic thrust underlying the various processes operative in the universe. "Our nobility," declared Pierre Teilhard de Chardin, "consists in serving the work proceeding in the universe."<sup>1</sup> This is equivalent to the religious definition of the good as the imitation of God's providence as we observe it in nature and in history.<sup>2</sup> The primary thrust of the phenomena operative in the universe is to foster the unfolding of life; every being is endowed with endless resources to meet the contingencies of existence, to ward off peril, to heal injured parts, and to compensate for weakness through the development of compensating strengths. Moreover, a direction is clearly discernible in the vast enterprise; it is to bring into being intelligent and, to some extent, morally sensitive exemplars of the species of man. If man is under obligation to cooperate in the work proceeding in the universe, then he must also be concerned with fostering life, with protecting and perfecting it.

It may be argued that the processes in nature have their harsher side, that they often involve injury and destruction to life, a "weeding" out of those unfit to contend with the struggle for survival, and that these processes could, therefore, serve as a model for the geneticist seeking to do away with unfit births. It is to be noted, however, that nature's harsher side is incidental to a benign, life-enhancing direction. And, especially, as we reach the human plane, nature—with the supportive care of man with techniques which are his, but, more often, of nature's devising—tends to allow the emergence and survival of fragile and even partly defective life. It certainly tends to favor genetic assets of the

1. Teilhard de Chardin, *The Future of Man* (New York: Harper & Row, 1964), p. 17.

2. See, for instance, the formulation of Moses Maimonides, as described by Ben Zion Bokser, *The Legacy of Maimonides* (New York: Philosophical Library, 1950), p. 95.

intellectual and the moral above the purely physical level, as we have noted earlier. In any case, when Jewish teachers defined the good as the imitation of divine providence as discernible in nature, they referred solely to the benign, and not to the stern characteristics. As Dr. Max Kadushin observed:

When the Rabbis tell us to imitate God, to walk in the ways of Heaven, they have in mind primarily the imitation of the various aspects of God's loving kindness—mercy and compassion, graciousness, patience, forbearance.<sup>3</sup>

We shall consider two of the more daring developments in recent bio-medical sciences: projections for the genetic reconstruction of the human race and various techniques for so-called behavior modification. All theories about the genetic restructuring of the human race were influenced by Darwinism, especially by the doctrine of natural selection. In the *Descent of Man*, Charles Darwin wrote:

With savages the weak in body or mind are soon eliminated; and those who survive commonly exhibit a vigorous state of health. We civilized men, on the other hand, do our utmost to check the process of elimination; we build asylums for the imbeciles, the maimed and the sick; we institute poor-laws; and our medical men exert their utmost skill to save the life of everyone to the last moment. There is reason to believe that vaccination has preserved thousands, who from a weak constitution would formerly have succumbed to smallpox. Thus, the weak members of civilized societies propagate their kind. No one who has attended the breeding of animals will doubt that this must be highly injurious to the race of man . . . excepting in the case of man himself, hardly anyone is so ignorant as to allow his worst animals to breed.

In a letter which Darwin wrote on July 3, 1881, he expressed the hope that the time would come when "an endless number of the lower races will have been eliminated by higher civilized races throughout the world."<sup>4</sup>

The ominous implications in Darwinism were noted by A. N. Whitehead. Especially as interpreted by Malthus and others in the population theories popular in the 19th century, Whitehead noted, this doctrine meant that the

destruction of individuals was the very means by which advance was made to higher types of species . . . As applied to human society this theory is a challenge to the whole humanitarian movement . . . Instead of dwelling on the brotherhood of man, we are now directed to proceed with the extermination of the unfit.<sup>5</sup>

According to J. L. Talmon,<sup>6</sup> this theory of genetics was a vital amalgam

3. Max Kadushin, *The Rabbinic Mind* (New York: Jewish Theological Seminary, 1952), p. 219.

4. Cited by J. L. Talmon, "Seedbed of the Holocaust and of the Revival," in *Jerusalem Post Magazine*, April 20, 1973:5.

5. A. N. Whitehead, *Adventure of Ideas*, (N.Y.: Mentor Books, 1955), pp. 42ff.

6. *Op. cit.*

in the Nazi program of genocide. Hitler and his associates simply put into practice the genetic vision of restructuring the human race by eliminating its inferior elements. Even in his definition of the inferior elements which were to be eliminated Hitler had predecessors among geneticists. His originality was in the passion with which he proceeded to activate this program.

Hitler perished in his bunker at Berchtesgaden, but the preoccupation of geneticists with remaking the human race continues to this day. A detailed proposal toward this end was recently made by Dr. Charles P. Johnson, a pediatrician in Iowa City. In an article entitled "Should Physicians Try to Save the Life of Every Defective Child" he made several startling suggestions:

Hospitals need to establish eugenics boards. Children with congenital anomalies should be presented to those boards to determine what steps should be taken. Not that the children will be purposely done away with, but to determine whether there should be judicial neglect . . . Population control implies not only control of family size but absolute control of family quality . . . If, as a result of uncovering genetic disease, the parents are unable or unwilling to use birth prevention, they should be *encouraged to use sterilization*. If counselling proves ineffective, the sterilization should be mandatory. To guarantee that all men are created equal legislation is necessary.<sup>7</sup>

Dr. Johnson's dream has actually been put into practice by some physicians. Two physicians have recently testified that "several thousand mentally and physically defective babies are left to die each year when medical treatment is withheld."<sup>8</sup>

Some proposals toward this end are even more radical in scope. Scientists are now exploring a technique for the production of life in the laboratory, without the medium of a natural mother. Some geneticists, in their excitement over the immense possibilities which such a technique would offer, are speculating about the possibility of dispensing with natural parenthood that brings into the world a mixed progeny, with its usual proportion of inferior stock. Through scientific breeding of human life, it may be possible to select the sperm of superior donors and, thus, bring supermen into being. Childbearing, in conventional form, would then be limited to genetically approved types who would be licensed for the privilege of sharing in the great act of remaking the human race.

The willful consignment of a defective child to extermination is an intolerable breach of man's duty to show reverence for life, to foster it, protect it, and perfect it, to the extent that the biological facts permit it. It is also a negation of the basic thrust operative in nature, to bring to

7. Charles F. Johnson, "Should Physicians Try to Save the Life of Every Defective Child?" *Ob. Gyn. News* (Oct. 15, 1972): 3, 38ff.

8. *N.Y. Times*, June 12, p. 18.

birth life, sometimes in a defective state, giving man the opportunity to render supportive care, to develop compassion and a sensitivity to suffering. For, be it noted, the availability of medical resources is itself rooted in the processes of nature, and represents a balancing and compensating factor to the harshness with which nature, in its impersonal workings, operates. To be sure, there are instances when a defective child might impose an undue burden on the family. A humane society should then step in and provide the care which the parents themselves are unable to provide. It is to be added, too, that some of these genetic defects are the result of our society's mismanagement of nature's resources, through the effects of nuclear testing, the pollution of the environment, and war. The tragic by-products of our callousness confront us with the challenge to reconsider our course. To destroy those by-products is to destroy the evidence, and to compound our moral offense. There are many vexing issues involved in this problem, but as to the attitude of the physician, it is defined in blunt terms in the code of Jewish religious law: "If a physician refrains from healing he is guilty of bloodshed."

The proposal to deny the right of childbearing to any segment of our population must be viewed as a proposal to violate the most fundamental prerequisite of a meaningful life. One remembers the cry of Rachel to her husband Jacob (Gen. 1:28): "Give me children or I will die!" Biological impediments sometimes interfere, as do various other factors, but all such interferences are a frustration of life, and when produced willfully through the design of society, they must be judged as highly offensive. Such proposals also counter the natural process itself, which has shown no racial or social or intellectual favoritism in bestowing on man and woman the biological basis for childbearing. In the Bible (Gen. 3:1,2) the call to procreation is the very first duty to which man is commanded, when he and his mate are told to "be fruitful and multiply, fill the earth and subdue it."

The genetic considerations underlying such proposals, moreover, are extremely dubious. They presuppose that severe physical handicaps, where they are transmitted by heredity, will be eliminated by denying the transmitters the right to reproduce. But every advance in civilization allows for the physically handicapped to lead effective lives through compensating strengths. Dostoevsky was an epileptic; Abraham Lincoln suffered from a congenital ailment known as Marfan's syndrome; Steinmetz and Toulouse-Lautrec were severely handicapped.<sup>9</sup> Geniuses have often sprung from ordinary stock, and, too often, geniuses have given birth to very ordinary offspring.

It is not only physical handicaps, but all "low quality" biological stock that these geneticists would eliminate. How are we to determine

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9. Albert Rosenfeld, *The Second Genesis* (New York: Arena Books, 1972), p. 144.

inferior stock? In the history of genetic thought, inferiority has sometimes been identified with low economic status, with some irregularity in the chromosome structure, with affliction by such minor ailments as diabetes, with membership in a so-called "inferior" race. In the medieval period, Jewish marriages and births were curtailed by government legislation. The Nazi program of genetic control called for the elimination, not only of Jews, but of various other "inferior" races, and one Nazi scheme called for the elimination of "ugly" people.<sup>10</sup> Considering the basic drive for childbearing, the enforcement of such a regulation, if it were undertaken seriously, would involve the imposition of a dictatorship by geneticists. Dr. Johnson gives us a clue to his true objective when he indicates that his goal is to make sure that all men are really created equal, and that he is prepared to seek legislation toward that end. But nature favors diversity and not equality, and legislation will not undo the thrust of the natural order. All men are created equal in the sense that they are all endowed with equal worth, regardless of any empirical inequalities that may divide them.

The laboratory production of life, if it is used to increase the availability of infants for adoption, may be seen in an affirmative light, provided there were really a large number of adopting parents whose craving for children could not be satisfied in any other way. But all notions of producing children in a laboratory are to be rejected as a monstrosity. Who would raise such children, and toward what end? A baby whale died some months ago in a New York zoo after the death of its mother, because, as was noted by the zoo keeper, it felt lonely and bereft of love. Mass-produced, laboratory-made children, raised by government bureaucrats, would be deprived of the basic humanizing factors that mold human life—the love of parents and a circle of kin—to give them roots and a sense of belonging in this bewildering world.

The most ominous expression of this trend in genetic theorizing is represented by the racist theories of Dr. W. Shockley, Nobel prize-winner in 1956 for the invention of the transistor, and the British biologist, Dr. Francis Crick. Dr. Shockley argues that the primary factor in intelligence is genetic heredity, that blacks are genetically inferior to whites, and recommends that there be adopted a bonus system to pay genetically inferior persons to consent to sterilization. But the sweep of Shockley's passion for remaking the race extends to more targets, not only to blacks: he includes those afflicted with diabetes, epilepsy, heroin addiction, arthritis, and others! The size of the bonus, he suggests, should vary with the gravity of the genetic factor to be eliminated. Thus, he projects an offering of a \$1000 bonus for each point below an I.Q. of 100. He is not dismayed that his theories show a marked affinity to Nazi theorizing. As

10. See Raul Hilberg, *The Destruction of the European Jews* (Chicago: Quadrangle Books, 1961), p. 643.



he sees it, "the lesson to be learned from Nazi history is the value of free speech, not that eugenics is intolerable."<sup>11</sup> Essentially similar views are expressed by Dr. Hans Jurgen Eysenck, a refugee from Germany in 1934 and a professor of psychology at London University, in his volume, *Race, Intelligence and Education*.

Dr. Crick, who shared a Nobel prize with Dr. James Watson for unraveling the genetic structure of DNA, expounded his genetic views in a public lecture on Nov. 2, 1968 at University College, London, on the subject "The Social Impact of Biology." This lecture was subsequently summarized in the scientific periodical *Nature*.<sup>12</sup> The following are selections from this summary:

"We cannot continue to regard all human life as sacred." The idea that every human life has a soul and that life must be saved at all costs should not be allowed; instead, the status of birth and death should be reconsidered. If, for example, a child were considered to be legally born when two days old, it could be considered to see whether it was an "acceptable member of society."

It might also be desirable to define a person as legally dead when he was past the age of 80 or 85, and then expensive medical equipment should be forbidden him . . . If new biological advances demand a continuous readjustment to ethical ideas, how are people to be adapted to the situation? Clearly by education, and Dr. Crick does not think it right that religious instruction should be given to growing children. Instead they should be taught the modern scientific view of man's place in the universe, in the world and in society, and the nature of scientific truth. Not only traditional religious views must be re-examined, but also what might be called liberal views on society. It is obvious that not all men are born equally gifted . . . So important is it to understand the genetics of human endowment that parents should perhaps be permitted . . . to dedicate one of a pair of identical twins to society so that the two twins could be brought up in different environments and compared.

Dr. Crick does not necessarily endorse each of these measures, but he believes that society must consider them as serious options in the light of the ever-mounting population pressure on the medical advances which allow more malformed babies to survive and more elderly people to continue living.

If the dream of Drs. Johnson, Shockley, Crick and their associates should ever come to realization, we would be witnessing the second coming of the demonic messiah, Adolph Hitler. Geneticists and their inspired bureaucrats would usurp God's throne and they would arrogate to themselves the power of determining who shall live and who shall die.

The fascination with remaking the human race has inspired an interest in other techniques, such as the reconditioning of man's behavioral patterns through chemicals, special electrical stimulants, psychosurgery, and environmental controls. Those afflicted with negative be-

11. Cited by S. Barram, "Manipulating the Personality," in *Patterns of Prejudice*, (London, vol. 7, no. 5, 1973), p. 2.

12. *Nature* 220, # 5166, (Nov. 2, 1968): 429f.

havioral tendencies, it has been maintained, could thus be brought into a more normal pattern of behavior. Many of the problems which arise from the anti-social behavior of individuals, could thereby be overcome, giving greater stability and inner peace to our world. Some prisons have made it a practice to dispense tranquilizers as a means of reducing the reactive capacity of inmates who often pose a problem to prison administrators, or they have subjected them to various periods of enforced isolation and other treatments which are, in essence, forms of torture in projects designated as "behavior modification" experiments.

The outrage practiced on inmates in these so-called "behavior modification" experiments has evoked sharp protests; some inmates have gone on hunger strikes, and there has even been reported a case of suicide. Outcries from prison reform circles have moved the Federal Bureau of Prisons to dismantle such "behavior modification" projects, but the practice still persists in various so-called correctional facilities.<sup>13</sup> The theoretical basis for all these efforts is the teaching of behaviorist psychology, which sees man as molded essentially by environmental conditioning. Perhaps the best known of these is B. F. Skinner, whose recent work, *Beyond Freedom and Dignity*, aroused much concern in humanistic circles.

In principle, we cannot dismiss all efforts at mitigating abnormalities in human behavior as necessarily offensive. These techniques hold positive as well as negative possibilities. In a sense, they are presently employed in dealing with mental illness. Electric shocks, as well as chemical treatment, are applied by psychiatrists in treating various forms of depression. But they pose a danger when used without the restraints that all medical ministrations requires. Drugs are often addictive, their efficacy diminishes after some span of usage, and they often produce dangerous side effects. Nature has a way of breaking out of the shackles which man would impose in order to obstruct her basic thrust and, when she does, she takes awesome vengeance on those who try. The unrest among prisoners, for instance, is often due to the appalling conditions of their existence, and it is necessary to redress these conditions, not to blunt the reactive energies of the victims. Should the blunting be continued, it will either crush their humanity altogether, or prepare for a more violent confrontation at a later time.

The enthusiasts of these techniques are often inspired by a dream of mitigating the troublesome extremes in society, of building a population more cohesive and stable and less given to radical deviation and dissent from the general norm.

We shall find it helpful to invoke here also the concept of the sanctity of life. Contemplating the thrust of evolution, we note a contin-

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13. *New York Times*, Feb. 7, p. 31; Feb. 8, p. 12; Feb. 28, p. 40.

ued tendency to diversity. Life, in all its teeming fullness, reveals dimensions of singularity, of uniqueness. On some levels this uniqueness reveals itself empirically, but on deeper levels it remains submerged, waiting to be realized. This uniqueness is the divine dimension which inheres in every person by virtue of his humanity. Its submergence, according to Hasidism, marks the imprisonment of God in the husk of man's lower self and it is the vocation of all good men to help liberate God from the shell of His imprisonment in creatures who have failed to grow to the fullness of their promise.

The right to life is the right to express one's uniqueness as a person, to permit all of the submerged potentialities to unfold. The therapies proposed are to be judged as good if they are intended to help the emergence of a person's true identity. They are intended to liberate a person's power to be what he can be. The therapist has not programmed a particular set of values for his patient; he seeks to liberate the authentic self so that it can function without inhibiting constraints. One of the most serious impediments to the full growth of personality is poverty, with all of its dismal social concomitants. A program to improve the behavior pattern of society by liberating the depressed potential of people should, therefore, include a resolute effort to redress the social and economic abuses which afflict a great part of our people.

As a rule, however, the concern for the reconditioning of human behavior is inspired, not by the desire to foster diversity, but to enforce uniformity. It is the tempting strategy of totalitarian regimes to minimize dissent. It is most graphically illustrated by the Soviet Union, which has confined many of its political dissidents in mental hospitals where they are often subjected to chemical treatment in order forcibly to change their responses to the regime. It is conceivable that such regimes may someday put chemical agents in the country's water supply to induce conformity and aid in the process of regimentation. Environmental and cultural conditioning have, of course, long been a policy of totalitarian—and even of some so-called democratic—regimes through the manipulation of the news media.

All such schemes are a monstrous offense against the sanctity of life, which is most meaningful when it unfolds to its fullest potentiality. It is doubtful whether such schemes would succeed, because they are designed to frustrate one of the basic drives of the life process, which favors the development of individuality, the flowering of diversity. The very presence of dissidence in the Soviet Union after more than fifty years of Communist brainwashing is testimony to the deep roots of the tendency to individualization, and to the presence of an authentic element in the self which external conditions cannot altogether subvert. If reconditioning is attempted it will do much mischief and serve as a brake on historical development. It must be combatted as an attempt to frustrate the

goal immanent in the whole drama of the emergence of life on this planet.<sup>14</sup>

As seen from the perspective of Judaism, the work of man, whether wrought by the exertion of his hands or of his brain, is not an "interference" with nature or with divine providence—but an expression of it. For man is a child of nature or, in the religious idiom, a child of God, and he was formed with his capacity to think, to invent, and to bend the raw processes operative in his environment toward human goals. Judaism expressed this by saying that man is God's partner in the work of creation, in the continued shaping of life toward life-enhancing ends.

But the physician's art, and the related arts of all other practitioners in the life sciences fraternity, permit of misuse. Scientists, as well as moralists, need to ponder the issues at stake so that the good which inheres in these developments shall not be frustrated. Science was meant to function in the service of life and must not be perverted to any other ends.

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14. Scientists themselves are sharply divided on these issues, as may be seen from the controversy on the subject at the annual meeting of the American Association for the Advancement of Science in 1972. See the report in *The New York Times*, Dec. 28, 1972, p. 7.

# *The Bio-Medical Challenges to Law and Morality*

MARK H. ELOVITZ

## Revolutionary Change

LESS THAN A DECADE AGO PIERRE TEILHARD DE Chardin observed: "Something is happening in the structure of human consciousness. It is another species of life that is just beginning."<sup>1</sup> The accuracy of that observation now seems unerring; its implications remain staggering to the legal, social and ethical imaginations. The accumulation of bio-medical knowledge and of technology is occurring at such an accelerated pace that it may be improbable, if not impossible, for any one of the social, medical, legal or moral disciplines to assimilate and apply its particular expertise to the broad spectrum of challenges posed by the new knowledge and technology.<sup>2</sup>

Interestingly enough, there is an obvious, if odious, pervasive failure by most citizens to internalize their intellectual understanding that the pace of change is accelerating precipitously.<sup>3</sup> Indeed, Margaret Mead observed that we are moving "into a present for which none of us was prepared by our understanding of the past."<sup>4</sup> Even more pointedly, futurist Robert Theobald discerns an inherent problem in coping with the current rapidity of change. He observes that "almost all of our study, our planning, our actions, continue to be based on the assumption that the future will resemble the past."<sup>5</sup>

The situation about to confront our legal system may serve as a case in point. Law is not intrinsically good or evil, moral or immoral. Rather, law is a reflection of the mores of the society which proclaims it. Yet, the onrushing pace of change may be so tumultuous that our basically conservative legal system and its presuppositions may have great

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1. Pierre Teilhard de Chardin, *Building The Earth* (New York: Avon Books, 1969), p. 23.

2. Harmon L. Smith, *Ethics and the New Medicine* (Nashville: Abingdon, 1970), p. 11; "Who Shall Live and Who Shall Die," *Symposium: On The Ethical Implications of the New Medical Technology* (New York: Union of American Hebrew Congregations, 1968), p. 7.

3. Alvin Toffler, *Future Shock* (New York: Random House, Inc., 1970), pp. 20, 196.

4. Margaret Mead, *Culture and Commitment* (New York: Doubleday & Company, Inc., 1970), p. 58. Also see: David P. Young, *A New World In The Morning: The Biopsychological Revolution* (Philadelphia: Westminster Press, 1972), p. 3.

5. Robert Theobald, *Dialogue on Technology* (New York: The Bobbs-Merrill Company, 1967), p. 9.

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difficulty in coping with an entirely new set of standards and an aberrantly altered set of societal facts and mores. Clearly, advances (sic!) in bio-medical and bio-psychological technology do not establish criteria for their implementation or restrictions on their utilization. Thus, Justice Earl Warren cautioned: “. . . without ethical understanding, the law, as a ship of state, would be stranded on dry land.”<sup>6</sup>

Significantly, the bio-medical revolution has introduced a plethora of ethically pregnant and portentous terms into the lexicon of our ethical, social and legal lives. While once society spoke of procreation and knew precisely what was meant by the Biblical “begat,” bio-medical technology is tinkering with wholly other forms of procreation, asexual cloning, multiple parenthood, artificial inovulation, mosaic reproduction and cell fusion.

The initial thrust of this paper is, thus, one which recognizes that “each new power won by man is a power over man as well.”<sup>7</sup> The rapidity, awesome power, and inherent ethical challenges in the bio-medical explosion pose the critical question: while there may be many new things that we can do, are there some which we should not do?

In recognition of the projected qualitative changes held out by the imminent future, there would seem to be an obligation to subject our present assumptions concerning law, morality and the nature of life itself to critical reexamination and reevaluation. Whatever the outcome of this reexamination, it is imperative that no previously held assumption be deemed inviolate or sacrosanct because it was basic. Unmistakably, past and present assumptions continue to exist only as glib and potentially gratuitous guidelines to confronting, and coping with, the bio-medical and bio-psychological revolutions.

Because the aforementioned, qualitative life changes, e.g., extra-uterine fertilization and cloning, are imminent, there exists a vast arena of legal, social and moral endeavor that requires greater exposure and scrutiny to, by, and for, the concerned public. These concerns are so basic and pervasive to the commonweal that interdisciplinary and inter-societal, as well as international, consideration is mandated, to preclude the necessity for ad hoc legislation, ad hoc social behaviorism and ad hoc morality arbitrarily fashioned by existential fact.

Furthermore, this essay is infused by my, perhaps, unorthodox thrust which presupposes that the ethicist's primary responsibility is not to pro-

6. Earl Warren, “Remarks of The Honorable Earl Warren,” Louis Marshall Award Dinner of The Jewish Theological Seminary of America, November 11, 1962, p. 3. Note also: District Court Judge Herman L. Breitkopf, “Who Shall Live And Who Shall Die,” *Symposium*, p. 8.

7. C. S. Lewis, *The Abolition of Man* (New York: Collier-Macmillan, 1956), p. 71. See also: Daniel Callahan, “New Beginnings In Life: A Philosopher's Response,” *The New Genetics and the Future of Man*, ed. by Michael Hamilton (Grand Rapids, Mich.: William B. Erdman's Publishing Co., 1972), p. 93.

vide dogmatic answers, but, rather, to focus the issues and problems inherent in the bio-medical revolution. It is my contention that answers alone often beg inherent issues. In addition, dogmatically unreflective solutions may be less illuminating, less prescriptive and less definitive than a series of properly posed questions which may aid in the adjudication of alternative choices and actions. As Professor A. J. Heschel advised: "To know that a question is an answer in disguise is a minimum of wisdom."

The questions posed by the bio-medical/bio-psychological revolution evoke rational debates as well as emotional (psycho-spiritual) turmoil. Both are real; neither need be deprecated as invalid nor vaunted as inherently superior. In point of fact, an undue number of otherwise enlightened academicians maintain a propensity to compartmentalize their thinking to a hermetically sealed, scientific rationality that is totally divorced from the world of the spirit and emotions. The human situation is such that the personality must be considered as a whole whose disparate parts combine to elicit specific values, social climates and practical legislation.

As such, antiseptic scientific rationality and its attendant terminology may serve to enlighten or to obfuscate. The emotionally freighted or the spiritually jaundiced phrase<sup>8</sup> or position may be equally capable of impelling one to reach either meaningful or reckless decisions.

### Utopian Parenthood

#### *The Problem*

Incredible advances in scientific technology have brought us to the point in history where both in-vitro fertilization and reimplantation in the uterus have been performed successfully in animals *and* in humans. Furthermore, the cloning of animals, where a replica of an individual of the species is developed asexually from one of its somatic cells, has already been successful. It appears that the technology for the cloning of mammals will be available in five years, and, unless research is halted, the technology for the cloning of human beings could be available within the coming generation. This is a conservative prognostication. Clearly, "the ethical questions raised by possibilities implicit . . . in each of these bio-medical areas are no less fundamental than the issues of free choice, the quality of life, the community of man, and the future of man himself."<sup>9</sup>

The bio-medical and bio-psychological revolutions pose serious threats not only to the survival of homo sapiens as a species but—if the

8. Joseph Fletcher, "New Beginnings In Life: A Theologian's Response," *The New Genetics And The Future of Man*, p. 19.

9. John V. Tunney and Meldon E. Levine, "Genetic Engineering," *Saturday Review*, August 5, 1972, p. 23.

species is not self-exterminated by experimentation in the creation of life—to the future of species identity. John Platt, a prominent biophysicist, candidly submits that “this generation marks the time when evolution by natural selection is replaced by evolution by human selection.”<sup>10</sup> Unquestionably, such a definitive alteration in life’s basic processes will involve challenges of an awesome magnitude.

Among the challenges posed by the concerns of this paper, one of the most basic is to the notion of the “sanctity of life,” so vaunted in the Western world. Few will argue that the sanctity of life is a central concept of the so-called Judeo-Christian heritage. It has even been stated that it is so deeply engrained in the Jewish mentality that: “One is tempted to say, even at the risk of being called racist, that reverence and respect for life—all life—is in our blood, in our genes.”<sup>11</sup> There will be little argument that the intrinsic sanctity of life, the unique preciousness of each individual underlies the Jewish attitude to existence.<sup>12</sup> A not unsimilar approach informs the thinking of most Western civilization.

It is, furthermore, not without significance that in modern Western political thought (a secularized product of Judaeo-Christian values) the principle of the *dignity of the individual* and its related concepts of *individual liberty* and *socio-political equality* have become central assumptions and values in our society.

Granting the deeply imbedded nature of these basic assumptions concerning the sanctity and dignity of human life, the ethicist must ultimately query: How does mankind attain two highly respectable goals, namely, the expansion of medical knowledge and the protection of the dignity and security of the individual?<sup>13</sup> Alternately stated, the bio-medical revolution implies an inherent assault on the core concepts of the sanctity of life, individual dignity and the assumed human rights to live, procreate and die. Thus, the technology of extra-uterine fertilization and cloning pose critical questions: What does it mean to create life? Is physiological life, i.e., biologic vitality and vegetative survival, sacrosanct? Is it a false humility or a subtle determinism which asks us to “leave things in God’s hands”? In short, the questions touch the very nature, substance, worth and purpose of man.

10. John R. Platt, “Life Where Science Flows,” speech to American Institute of Planners’ Conference, Washington, D.C., October 2, 1967.

11. Mordecai Brill, “Updating the Sanctity of Life,” *Jewish Spectator*, Spring 1974, p. 60.

12. Byron L. Sherwin, “To Be, Or . . .,” *United Synagogue Review*, Spring 1972, p. 5. Also see: *Sanhedrin*, 4-5; Maimonides, *Hilkhot Shabbat* 2:1.

13. Samuel E. Stumpf, “Momentum and Morality In Medicine,” *Annals of Internal Medicine*, Vol. 67, No. 3, Part II, Sup. 7 (September 1967). Regrettably, most Americans, including physicians, are afraid to face the ultimate issues, as is pointed out by Dr. John B. Graham in “Acceptance of Death-Beginning of Life,” *North Carolina Medical Journal* (1963), 24:319.

The ancient Psalmist scanned the heavens, contemplated the moon and stars and queried: "What is man that Thou art mindful of him?"<sup>14</sup> "What is man" or perhaps "what should man be" are the critical questions stimulated by a technology that discards natural selection for reproduction by man's own deliberate choice, design and predetermined fabrication. The new technology implicitly asks: What sort of humans do we desire, ideally, to create? What does it, and what will it, mean to be a person, especially if mankind may be reproduced asexually? Indeed, can man's "humanity" survive these technological advances in the creation of life?

In the course of solving these questions, we must also ponder the following: What is really human? What is, and is not, *homo sapiens* in our evolutionary past? What is, or ought to be, normatively human? Will the rights, obligations and responsibilities of the so-called normative human be identical with those of the non-normative human? If not, why not, and who decides? What is the overarching norm against which we may measure the humanity or inhumanity of *homo sapiens'* behavior? While there is a tradition of natural law that stresses the existence of an "abiding human nature" which can be understood and which can yield guidelines for determining what man is, and is capable of becoming, there are also a group of theories which unceremoniously deny that there is any such thing as an abiding human nature or that knowledge of such a nature could provide mankind with norms for living the so-called good life.

The foregoing are not mere ivory-towered inquiries. Practically speaking, when does a living extra-uterine organism become human? What makes for a human being? To be a person in the Constitutional sense, must there be a minimum of cerebral-cortical function? Need there be some levels of self-awareness, self-control, and memory? What are the human requirements for a sense of time and futurity? Is there any necessity for a capacity for inter-personal relationship—or love? Can a minimum I.Q. be a determining factor?

Research in extra-uterine fertilization and cloning urgently demand debate and the formulation of a viable philosophy of human life to confront the future. Yet is there a legitimate sense in which one can speak of the future welfare of those yet to be created by whatever natural or unnatural process of procreation, reproduction, fabrication or decantation?

In the final analysis, can we even agree that, since man is a self-interpreting animal, it is man who must interpret what it means to be human and how and why a living humanoid is dehumanized? Until man is prepared to make such determinations, "it is appropriate for us to

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14. Psalms 8:3.

keep an eye on the distance between our technical sophistication and our moral sensibilities.”<sup>15</sup>

### *Dehumanization and Depersonalization*

In his paper on “New Beginnings In Life,” Dr. Leon Kass asserts that “the main problem to be found is not tyranny but voluntary dehumanization.”<sup>16</sup> Agreeing with that assessment, Dr. Frank Grad affirms that “bio-experimentation on human genetic materials is dehumanizing because it turns living matter into a thing, because it turns life into an object.”<sup>17</sup> Even if we were to grant the above approach, is not the search for knowledge a peculiarly human characteristic? If improving man’s lot is human, is not the making of better human beings a justifiable human endeavor? As Dr. Daniel Callahan has observed:

To do what can be done is human. In a descriptive sense, the search for “New Beginnings” is uniquely human. Only man among all living beings has the capacity to conduct the search, and only man has the capacity to create visions of the good that a successful search might bring. In a word, the proponents are hardly likely to accept the charge that their work is dehumanizing. They are likely to make quite the opposite claim.<sup>18</sup>

What acts must remain personal to be human and which can be depersonalized without leading to dehumanization? Necessarily, the term “dehumanize” must be suffused with some definitively concrete meaning lest it become a term that would serve only to mystify and confuse.

Inherent in my approach is the assumption that a concretized meaning of dehumanization rests in any actual threat to human life (e.g., in-vitro fertilization and cloning) which inherently tends to sever the basis of obligation and sense of responsibility between parent and child. The demise of the monogamous family unit, per se, is not specifically at issue. Rather, the core question is a determination of whether there is some viable familial or societal relationship that could preserve the traditional responsibilities of adults to children and biological parents to child. For better or for worse, there is as yet no societal guideline to replace the “monogamous unit” as a social structure. It has been astutely observed:

All who attempt to draw one up make the same mistake: They assume that the only real issue is how to insure the physical and psychological development of children and therefore look for social structures which would do the work of biology. The very wisdom of nature is that the foundation necessary for physical and psychological health is a biological relationship between parent and child, for only that kind of relationship

15. Smith, *Ethics and the New Medicine*, p. 82.

16. Leon R. Kass, “New Beginnings in Life,” *The New Genetics and the Future of Man*, p. 52.

17. Frank P. Grad, “New Beginnings In Life: A Lawyer’s Response,” *The New Genetics and the Future of Man*, p. 68.

18. Callahan, p. 97.



can create the sense of obligation and commitment which can enhance the welfare of children.<sup>19</sup>

While our American courts have repeatedly argued that "the maintenance of the family unit is an essential element in the preservation of our form of society,"<sup>20</sup> the courts have also asserted: "It goes without saying that monogamy is the controlling principle of Anglo-American marriage law." However, that principle is "so riddled with exceptions as to leave one in doubt as to how much of it is left."<sup>21</sup> Nonetheless, one is reminded of Justice Douglas' oft-quoted statement: "Marriage and procreation are fundamental to the very existence and survival of the race."<sup>22</sup>

Need it be reiterated that:

Human procreation is begetting. It engages us bodily and spiritually as well as rationally. Is there possibly some wisdom in that mystery of nature which joins the pleasure of sex, the communication of love, and the desire for children in the very activity by which we continue the chain of human existence? Is biological parenthood a built-in "device" selected to promote adequate caring for posterity?<sup>23</sup>

Would the elimination of this process via extra-uterine fertilization and cloning be dehumanizing?

Alternately stated, the laboratory decantation of human beings is not human procreation as we have come to understand it. In-vitro fertilization transforms the natural process of generation into the artificial process of hand-made manufacture. As Dr. Kass has pointed out:

What has been violated, even if only slightly, is the distinction between the natural and the artificial, and, at its very root, the nature of man himself. For man is the watershed which divides the world into those things that belong to nature and those that are made by men.

Furthermore,

If the depersonalization of the process of reproduction and its separation from human sexuality dehumanize the activity that brings new life, and if the manufacture of human life threatens its humanness, these together add up to yet another assault on the existence of marriage and the human family.<sup>24</sup>

All this is sufficient to pose critical problems of dehumanization. The complexities are exacerbated by the technique of cloning which renders the human male obsolete. Human ova, nuclei and uteri are all it requires. All three can be supplied by women. In such circumstances, should society plan for the complete elimination of biological kinship

19. *Ibid.*, p. 103.

20. *Haight v. Haight*, 241 Or. 532, 405 P.2d 622 (1965).

21. Homer W. Clark, Jr., *Domestic Relations* (2nd. Ed.) (St. Paul: West Publishing Co., 1974), p. 88.

22. *Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942).

23. Kass, "New Beginnings," p. 53.

24. *Ibid.*, p. 54.

as a foundation of social life? Would such utopian parenthood (or absence thereof) be dehumanizing?

Some argue that the advantage of natural procreation is that it facilitates the sense of commitment of specific adults to specific children. Thus, a case may be made for the notion that

. . . depersonalization of procreation and a complete surrender to the calculating will would be "seriously dehumanizing no matter how good the product." Is this because ANY act which was biologically or historically once personal leads to dehumanization if it becomes depersonalized or subject to technology?<sup>25</sup>

In the final analysis, what effects will dehumanization have on the nature of one's social, legal and ethical position as a member of society?

### *Fabricated Man and Utopian Parenthood*

The book of Genesis details the first human procreation. Adam "knew" Eve, his wife, who conceived and bore Cain. That method of human reproduction was unchallenged for centuries. Until recently, begetting, siring, procreating and reproducing all conveyed one unequivocal act. But all that has been radically altered by the spectre of "decantation" that was posited by Huxley's *Brave New World*, and is now a reality. Is it not fair to suggest that any human is largely what he comes from, and that the nature of his life and community will be influenced by the method by which he comes to be?

Because of the complexity of problems posed by extra-uterine fertilization, it may be appropriate simply to list and comment upon some of the problems involved therewith. Thus:

1. Physicians have a duty to treat infertility by whatever means only if patients have a right to "have" children by whatever means. But the right to reproduce is an ambiguous and not unqualified right, even though the commandment to be fruitful and multiply is the first commandment of the Bible. To whom does the right to propagate belong? To a woman, to a couple, to a man, to a bio-medical technician? Is there a right to carry and deliver or simply a right to wean, rear and nurture? Is there a right to have one's own biological child? Can a childless couple claim either a natural desire or right to have a child which test tube technology could, or must, provide them? Does a parent's yearning for a child entitle the parent to "hatch" that child by methods which hold an unknown risk of deformity? Indeed, it has been suggested that the

most serious danger from the widespread use of these techniques will stem not from desires to breed a super race, but rather from the growing campaign to prevent the birth of all defective children in the name of population control, "quality of life," and the supposed "right of every child to be born with a sound physical and mental constitution, based on

25. Callahan, p. 99.

a sound genotype." No parents will in that future time have a right to burden society with a malformed or a mentally incompetent child.<sup>26</sup>

Is society prepared to accept the ramifications implicit in the foregoing?

2. In-vitro fertilization also begs definitive answers to the question of when does a living human organism, in the process of development, acquire protectable humanity? In test tube fertilization, nascent lives will be willfully produced in full cognizance that many such test tube creations will be terminated, destroyed and discarded. If a human fetus may have some inchoate right *not* to be born, as some recent lawsuits have suggested,<sup>27</sup> does a fetus conceived in a laboratory have the same inchoate right as a human?

3. Extra-uterine creation further raises the ghastly and ghostly legal spectre of a child who, though born into a specific consensual family unit, is legally an orphan from the moment of conception. Such a test tube creature would have no genetic ties to any adoptive parents or to the gestational (host) mother who carried him. This situation reawakens our previous discussion as to the nature of the family as a foundation of societal existence. What is, or will be, a family? Should families be only consensual units or biological units or any variety of combinations? Test tube procreation suggests a definitive trend toward the ultimate destruction of the family as a biological unit. Is society, particularly the Jewish family-oriented culture, prepared to point itself in that direction?

4. Additionally, laboratory fertilization poses the following moral, legal and psychological queries: What are the psychological consequences, for the womb-lending sister, of giving birth to her nephew? Whose child is he? If the donor of sperm has no claim over a child born after artificial insemination, why should the donor of ova? Is a person morally justified in permitting her body to be utilized as a human incubator? What is the morality of womb-renting?

In the absence of extracorporeal gestation, would laboratory fertilization give rise to a caste of indigents with wombs available by nine-month lease? Is there not a necessary objection to the extramarital utilization of any technique which demands and perpetuates, both in theory and in practice, the exploitation of women and of their bodies?

5. Indeed, utopian motherhood further admits to these additional problems: Do, and should, these women know what is going to be done with their eggs? To whom belong the rights governing reproductive tissue removed at surgery? If one's ova are to be implanted in another woman, is the donor's permission necessary?

6. The uncertainties of laboratory breeding also raise the issues of

26. B. Glass, "Science: Endless Horizons or Golden Age?" *Science* 171:13-29, at p. 28.

27. Annot., "Tort Liability for Wrongfully Causing One to be Born," 22 A.L.R. 3d 1441 (1968); cited in Brodie, "The New Biology and the Prenatal Child," *A.J. Of Family Law* 391, 396-97 (1970).

what will happen to those embryos or living human materials which, of necessity, will be discarded at the end of each breeding day. Is living human material arbitrarily discardable? Shall this act be described as murder, abortion, infanticide, feticide, or simply garbage disposal?<sup>28</sup> Then, too, who, or what group, may determine the criteria allowing such discarding of human embryos? Assume that there is a recipient available who desires to nurture the otherwise unwanted fetus. To whom do the laboratory embryos belong? The donor of the ovum? The donor of the sperm? The geneticist? The technician? "Shall we say that discarding laboratory-grown embryos is a matter solely between a doctor and his plumber?"<sup>29</sup> Indeed, precisely what should be the nature of the relationship between the scientist and his human product? Will the laboratory technician be viewed as a manufacturer with strict liability and implied warranties for his product or will he be legally obligated as a father to support this human which he voluntarily produced?

7. What will be the effects of artificial reproduction on our attitude toward, and respect for, human life? How will we react to those fellow humans engaged in breeding, to those who adopt laboratory grown humans, to the test-tube child itself? How about a prospective (test-tube) son-in-law whom your daughter brings home to dinner? Is artificial reproduction "depersonalized" or is it highly personalized, since it is rationally directed and controlled, while ordinary reproduction is not?

In sum, there are a myriad of unsolved problems and unposed questions which ominously cloud the issue of extra-uterine fertilization. Still, as Dr. P. Ramsey has observed:

The decisive moral verdict must be that we cannot rightfully get to know how to do this without conducting unethical experiments upon the unborn who must be the "mishaps" (the dead and the retarded ones) through whom we learn how.<sup>30</sup>

In short, there seems, at present, to be no compelling reasons to proceed with the laboratory reproduction of human beings, especially in light of the host of societal, moral and legal problems that have already made themselves manifest.

### *Cloning*

Can a human single cell be persuaded to grow, divide and develop without the assistance of its natural mate, a sperm cell? Contrariwise, can a singular sperm cell grow and develop without an egg? The re-

28. See: A. Shuster, "Human Egg is Fertilized in Test Tube by Britons." *New York Times*, February 15, 1969. In late July 1974, a prominent British physician announced the successful birth of three children conceived in vitro. Blatant by its absence was any reference to his failures which were discarded!

29. Kass, p. 35.

30. P. Ramsey, *Fabricated Man* (New Haven: Yale Univ. Press, 1970), p. 113.

sponse to both queries is an astounding yes.<sup>31</sup> Bio-medicine is now concerned, not only with procreation without intercourse, but with reproduction without sex. This incredible process is referred to as cloning. Extra-uterine fertilization rendered men “only” obsolescent; cloning completes the process!

Specifically, the cloning process is such that bio-technologists can “re-create” a precise and unerring carbon copy of an organism. Some wags have referred to cloning as “human xeroxing.” That is an accurate, if colorful, description of this process which poses a multiplicity, and potentially monstrous series, of social, legal and moral questions.

At the outset, cloning presents some rather incredible options including: the potential for multiple copies, i.e., identical reproductions of a single individual; the potential for a kind of serial immortality which would be gained by continually having oneself cloned prior to death (one human countenance could be perpetuated indefinitely); a type of “auto-adultery” in which a woman gives birth to “herself” via a cloned cell, utilizing one of her own nuclei; watching “oneself” being born nine months after implanting a cloned cell with one’s own nucleus in a surrogate gestational mother. Shocking as these potentialities may seem, they do not represent flights of fancy but, rather, reality at our figurative doorstep. In short, the potential that one day someone will meet and greet “himself” poses shattering questions which involve not only the values which derive from our shared sexual past but, also, assaults the very essence and meaning of humanity.

A number of reasons have been advanced in favor of clonal reproduction. Prominent among these are: to copy a “superior” person, i.e., genotype; to attain genetic immortality of superior genotypes; to provide a continual supply of spare and interchangeable parts for transplantation. Not unsurprisingly, situation ethicist Joseph Fletcher submits that:

If the greatest good for the greatest number were served, it would be justifiable not only to specialize people by cloning or constructive genetic engineering but also to bio-engineer or bio-design parahumans or “modified” men as chimeras (part animal) or byborg androids (part prostheses).<sup>32</sup>

If the foregoing is not sufficiently abrasive and shocking to “today’s” moral, legal and social sensibilities, Fletcher further admits that:

I would vote, for example, for cloning topgrade soldiers and scientists or for supplying them by genetic intervention if needed to offset an elitist or tyrannical power plot by other cloners—a truly frightening possibility, but imaginable. In most situations, I suspect, I would favor making and using man-machine hybrids rather than genetically engineered people to

31. Robert T. Francoeur, *Utopian Motherhood: New Trends in Human Reproduction* (New York: Doubleday & Company, Inc., 1970), pp. vii-viii.

32. Fletcher, p. 83.



carry out dull, unrewarding, or dangerous roles required for the social welfare, such as the testing of suspected pollution areas or the investigation of threatening volcanoes.<sup>33</sup>

Unquestionably, the cloning process releases a veritable swarm of questions, e.g., Who determines who will be cloned? Does one have a right to refuse to be cloned? Is there a right to be cloned? Will a clone be considered a person with rights or as "real property"? How will normal, i.e., sexually created, members of society react to clonal people and vice versa? Whom will clones be permitted to marry? Will clones be permitted to foster "normal," sexually produced progeny? What identity problems will clones face? Will a group of identical clones be able to communicate with each other in a fashion superior to that of unclones? What effect will that have on societal relationships? Will a cloned child develop sibling rivalry with its biological parent? What identity crisis will the parent of the clone face? What are the ethics of developing a clonal form for "spare parts"? What will be the legal "rights" of a clone? May embryonic clones of people be placed in cold storage and preserved for future use? What impact will clonal reproduction have on the notions of marriage, the family and parenthood? What is the morality of the process of cloning itself? Is it dehumanizing?

Implicit in these questions are the problems of nature and humanness, dignity, individuality and the sanctity of each individual life. To attempt to resolve any of these questions here would be presumptuous and unthinkable. Still, the issues must not be evaded.

Central to the concept of the inherent dignity and worth of each individual human is the core concept that each person has a special relationship to God. That special uniqueness is best elucidated by the Rabbinic Midrash which advises:

For a man stamps many coins in one world and they are all alike; but the King who is king over all kings, the Holy One blessed be He, stamped every man in the mold of the first man yet not one of them resembles his fellow.<sup>34</sup>

Indeed, in Judaism, the insistence upon the sanctity of every human life is related to the notion of the unique irreplaceability of each individual. Cloning, thus, represents a blatant and unequivocal rejection of the Rabbinic value system and its attendant priorities.

### Conclusion

The issues raised and the questions posed herein strike at the heart of human existence as we know it. In a sense, as René Dubos indicated: "We must not ask where science and technology are taking us, but rather

33. Ibid., pp. 83-84.

34. N. N. Glatzer, *Hammer on the Rock: A Short Midrash Reader* (New York: Schocken Books, 1962), p. 15.

how we can manage science and technology so that they can help us get where we want to go.”<sup>35</sup> The direction in which mankind proceeds will depend not only on our self-conception, but upon whether we pose the proper questions at the proper time and in the proper context. Thus, it is regrettable that “people involved in a great crisis or upheaval seldom understand what is happening to them.”<sup>36</sup>

It is unquestionable that mankind is now, as never before, facing itself as an experimental object. One wonders if man will pause and question the direction of his progress. Theologian Helmut Thielicke wisely pondered: “Is there something about man that dare not be changed—something in his very nature that dare not be violated—if he is to remain human”?<sup>37</sup> Can man indulge himself by playing Creator without resolving questions about the sanctity of life and the value of maintaining man’s freedom, dignity and individuality?

In sum, I discern no compelling reasons to proceed with experiments in human decantation and re-creation. Practically speaking, a refusal to proceed would mean that there will be some things we will never come to know or to investigate. To proceed with no demonstrable compelling reasons to do so is to embark upon a scientific, social, legal and ethical gamble that is not only highly speculative, but risks the actual future of mankind as a wager in a bio-medical dice game. An international decision to preclude experimentation in reproduction would require society to act on the basis of ethical principles and social considerations which, in the past, have been observed only in the breach. As Dr. David Callahan has observed:

Mankind has usually been adept at finding ways to set . . . values aside in the name of progress, science, taste, or practical necessity. It would be a cultural milestone if for once they are not set aside. What we will lose in technological progress may well be compensated by what we will gain in ethical progress. I am willing to settle for that trade.<sup>38</sup>

An appeal to ethics in our age may be just as utopian and radical as the very revolutionary advances of bio-medical technology. Yet, if the latter has succeeded, is there any compelling reason why ethics must always be outstripped by technology?

35. As reported by Archibald MacLeish, “The Great American Frustration,” *Saturday Review*, Vol. 51, No. 28 (July 13, 1968), p. 16.

36. Norman Cousins, *Saturday Review*, Vol. 52, No. 17 (April 26, 1969), p. 26.

37. Helmut Thielicke, “The Doctor as Judge of Who Shall Live and Who Shall Die,” in Kenneth Vaux (ed.) *Who Shall Live?* (Philadelphia: Fortress Press, 1970), p. 146.

38. Callahan, p. 106.

# *The Paradox of Euthanasia*

TEODORO FORCHT DAGI

THE GOOD PHYSICIAN, TRADITIONALLY, COULD BE identified by his human compassion and medical expertise. His human compassion manifested itself in a sensitivity to suffering, an understanding of the particular needs of his individual patients, and a commitment to combine the sensitivity and understanding with availability and dedication. His medical expertise found expression in careful examination, accurate diagnosis, appropriate therapy, and thorough follow-up. The effectiveness of the traditionally optimal physician was limited only by the state of medical knowledge. Osler's dictum of the late nineteenth and early twentieth century was, thus, perfectly phrased: medicine and the physician aimed to "cure sometimes, relieve often, and comfort always." Clearly, the ideal physician would function always to the best interests of his patients, and could be judged by his success in comforting, relieving, and curing.

The classical notion of euthanasia was derived from the idea that one should die well, just as one has lived well. "Eu" means well, good, or regular; "thanasia" implies the process of death. The Stoics, for example, felt that it was perfectly appropriate for a man to commit suicide when faced with an incurable illness. There was a ritual involved, to be sure, and the decision to commit suicide was not undertaken lightly. Nonetheless, one of the functions of the physician in Stoic philosophy was to supply an accurate prognosis of a patient's clinical condition that he might know when to prepare for death. A natural source for the poison (making euthanasia possible as a truly ritually satisfying "easy death") was the same physician who made the prognosis. Not all Greek philosophies were in accord with this notion, however. Certainly the Hippocratic Oath required a physician to desist from the supply of poisons to patients for this purpose, and even from the advice that might lead to suicide. Temkin and Edelstein<sup>1</sup> both teach that the Hippocratic Oath was by no means a universal doctrine, and that it was most probably the product of a Pythagorean school of physicians. The Pythagoreans, in any case, did oppose euthanasia, and were in agreement, in this matter, at least, with Plato. It is unclear to what extent the notion of euthanasia was

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1. Oswei Temkin and Ludwig Edelstein are among the deans of classical medical history. Edelstein's essay "The Hippocratic Oath," reprinted in *Ancient Medicine*, Temkin ed., (Baltimore: Johns Hopkins University Press, 1969), discusses the arguments concerning the universality of the Hippocratic Oath and its meaning.

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extended to allow or require the physician to cause the death of a patient for ritual or philosophical rationale, but it appears as though the act of euthanasia was essentially a personal decision and a personal act conforming to a philosophy of a certain style of life. It does not appear that euthanasia, at that time, was performed for relief of suffering alone, without a concomitant philosophical affirmation of purpose.

Christianity, for the most part, was opposed to suicide. Even though Christianity condoned martyrdom, and rewarded its martyrs with beatification, the essential for man's life on earth was preparation for the after-life. One who ended his own life, for whatever purpose, interfered with the plan for his life, and, in retribution, incurred grievous punishment in the world to come. As a philosophical position, therefore, euthanasia by suicide was untenable, and euthanasia by the physician or another agent was murder.

The moral aversion to euthanasia or suicide in the face of suffering was obviously influential in terms of setting the cultural expectations surrounding the terminally ill patient. The apparent uniformity of condemnation of euthanasia was, however, far from perfect. More's *Utopia*, for example, expresses the opinion that a man ought to be allowed to dispatch himself rather than suffer intolerably, and Butler's *Erewhon* reinforces this sentiment in describing a society where disease is a capital crime. Both *Utopia* and *Erewhon* were intended as social exaggerations, of course. *Utopia* expressed a political fantasy, while *Erewhon* ridiculed current notions of illness and medicine by extending prevalent opinions to the absurd. But it is apparent that these writings and others like them reflected widely-held opinion. Attitudes to euthanasia and suicide may have been influenced by ecclesiastical opinion, but were not dictated by them.

Between the beginning of the nineteenth century and the present, the practice of medicine changed more strikingly than it had in the thousands of years of tradition before. The nature of this change and the reasons behind it are beyond the scope of this essay. Nonetheless, it must be emphasized that the openness with which euthanasia came to be discussed, from the late nineteenth century onward, cannot be isolated from the entire social revolution by which medicine was affected. In practical terms, euthanasia was removed from the church to the courts. Whatever attitudes existed were reflected in law and court decisions. Changes in attitudes were also mediated by attempts to change the law. Euthanasia was seen as an extension of medical activity which required regulation. Morality, in this case, was expressed through law.

In 1936, a bill permitting euthanasia was introduced into the British Parliament. That the bill could be introduced at all says much about the British attitude. Although British law continued to condemn mercy-killing as criminal, the Archbishop of Canterbury made this qualification in

the course of the debate: "If there be extreme cases where it is legitimate to shorten a life of pain, they should be left to be dealt with by the medical profession." A similar bill was introduced in 1967, and, despite its defeat, has been regularly reconsidered in one form or another every few years.

Why is euthanasia a problem altogether? What arguments are used to justify what, in other terms, would be murder? Why refer to it as a paradox at all? We must recapitulate, for a moment, and return to the idea of a "good physician."

One way of judging a "good physician," as we noted, involved an assessment of his medical expertise and human compassion. Obviously, these two criteria telegraph a great deal of information, and, indeed, may be criticised as being so broad as to be useless. Nonetheless, I think that these criteria emphasize, albeit in a very general way, that the physician must be more than just a technician, and more than just an understanding human being. Both qualities are necessary for a physician to function appropriately, and both must be cultivated for a physician to be a "good physician." From a classically ethical standpoint, however, these two characteristics can be analysed further. Modern ethical theory breaks down ethical justifications into deontological and teleological considerations. Deontological considerations require an act or a deed to be ethically acceptable regardless of the *intent* of the deed. Teleological formulations are more forgiving, and seek a higher end (*telos*), or higher principle by which an action might be judged. Roughly speaking, deontology is represented in the Ten Commandments, where the acceptability of certain distinct acts is ruled upon; teleology, on the other hand, accepts the "ends justifies the means" argument present in classical ideal-utilitarianism. According to teleology, then, an act is ethically justified if, by virtue of its commission, some higher value (utility, greatest good for the greatest number, world peace, lack of suffering, etc.) is served. Deontology, however, would examine the means themselves, and judge them according to their own merits before passing on them on the acceptability of their end or their intent. There are mixed forms of argument as well, and numerous other formulations of virtue and the good. For the purposes of this essay, however, we will restrict ourselves to viewing arguments as displaying predominantly deontological or predominantly teleological tendencies.

A re-examination of the "good physician" reveals that the physician must withstand both teleological *and* deontological scrutiny. It seems safe to say that, as an underlying principle in medicine, the physician must act for the good of his patient. Not every act, however, is justified just because the patient benefits in some way. Other widely held notions of right and duty may conflict with this principle. Lying, in our society, is generally considered a reprehensible act. If, however, a patient's suffer-

ing can be mitigated by a lie about his condition, the physician may feel called upon, at the very least, to consider the lie. He might choose a line of ethical reasoning which would excuse the lie (while still recognising it as a reprehensible act) on the grounds that the higher principle demands it. The Hippocratic maxim *primum non nocere*, "first do no harm" represents a form of the higher principle which, though couched in deontological terms, requires a teleological evaluation. "Do no harm" is weaker than the first underlying principle for medicine. Nonetheless, it might be used to justify substituting a withholding of truth for a direct lie: it might be argued that some harm would accrue to the patient or the doctor-patient relationship by a direct lie. The point is that even a teleological principle is open to criticism by external notions of right.

Consider, now, the relationship of a physician to a patient who is terminally ill, and who is suffering terribly from an incurable disease. By what principle must the physician act? Whether by Osler's dictum or by teleological justification, or even by the quality of manifest compassion which the physician has nurtured, the latter has a responsibility to do whatever he can to comfort the patient and relieve the suffering, even if he cannot cure the underlying illness. He may be able to treat symptomatically, and relieve some manifestations of the disease without affecting its course. He might treat palliatively, changing the course of the disease temporarily, but not really making any difference in the long run. He may give narcotic or analgesic medication, or furnish tranquilizers or other psychotropic medication so that the patient might suffer less, even where symptomatic treatment has failed. Each of these actions satisfies simultaneously a higher principle of medical intention, the patient's benefit, and a deontological principle judging the act itself. On the face of it, there is no objection either to the aim of relieving pain by the administration of narcotic medication, or to the act of administering narcotics to relieve pain. If a drug addict were involved, the physician's situation would not be as easily decided, for the addict might be in withdrawal, asking for narcotics, and yet the physician might refuse, under the principle that narcotics in the absence of pain are *not* justified, and the benefit of the patient would best be served by helping him defeat his addiction rather than by simply alleviating his short term suffering. I am, of course, simplifying the argument, and not admitting many other considerations in the case of a drug addict. In the case of a terminally ill patient, however, many of the considerations which a drug addict would evoke relative to the administration of narcotics, are simply absent and the act, *per se*, of administering narcotics for the relief of pain would normally proceed unchallenged. What if the physician could do absolutely nothing, however? What if the pain were unbearable, the narcotics ineffective, the disease indolent, and the course inexorable? This is the sort of case where euthanasia is most convincingly proposed.



What is actually done in euthanasia? The act involves the administration of some measure intended primarily to shorten the patient's life. There are distinctions to be made between a measure involving the active prescription of a drug or regimen whose direct effect would be fatal, a measure characterised by the removal of an artificial life support, and a measure dictating the refusal to begin a new therapy in the presence of a complication in the patient's course. The first, an active prescription of a fatal agent, is often called "active euthanasia," or "euthanasia by commission," whereas the second and third measures are often classified as "passive euthanasia," or "euthanasia by omission." Let us restate the acts themselves in colder terms: "active euthanasia" is killing by intent; "passive euthanasia" is killing by neglect. Killing is not normally countenanced in the absence of self-defense, or in the absence of a judicial decree. The reason for even assuming a discussion of killing in euthanasia has to do with the intent of the killing: it is intended to relieve suffering and to benefit the patient. Hence, we have the paradox of euthanasia: killing, an action which is always seen as noxious, is suddenly proposed to us as not only justifiable, but, verily, beneficent. The paradox is further complicated by the notion that the patient himself benefits from an action which will end his life.

The physician challenged with this paradox realizes his impotence. Whatever he does is wrong. If he allows the patient to live, the physician is contributing to the patient's suffering by virtue of his decision. If he commits euthanasia, the physician has, perhaps, satisfied a teleological consideration, but has certainly committed an act which deontologically is reprehensible. At this point, the distinction between "active" and "passive" euthanasia becomes crucial. If no *act* is committed, the deontology is more likely at peace. Even though one could easily argue that the *decision* to commit passive euthanasia is, itself, an act, and, hence, subject to deontological scrutiny, it appears as though decision is represented as an act of mind, and acts of mind are generally judged differently than are acts of body. Omission is thus seen as "less severe," somehow, than commission, and benign neglect becomes more palatable. I do not intend to minimize the importance of an act of mind as an act in deontological terms, but it is an argument which this paper cannot hope to consider adequately.

"Passive euthanasia," as we noted, can itself be distinguished into two components: there is that part of the medical decision which refuses to begin therapy for a newly-developed complication of an underlying illness; and there is that part which would discontinue the means that have already been employed. Consider a terminal cancer patient who is suffering from a brain tumor. It is quite likely that in the course of the hospitalization for the brain tumor, the patient would develop a secondary infection such as pneumonia, meningitis, or a urinary tract infec-

tion. The first component of "passive euthanasia" might consider at this point whether or not to start treatment for the infection. It must be emphasized that the secondary infection usually responds to medical treatment without too much difficulty, but could well be fatal in the absence of appropriate therapy. The second component is more complicated. Consider a patient in irreversible coma who requires an artificial respirator to breathe, a pacemaker for heartbeat, massive doses of pressor agents to keep up blood pressure, and special provision for the maintenance of normal body temperature. In the absence of these artificial means for maintaining respirations, heartbeat, etc., it would appear that these functions would not exist; the patient would neither breathe nor have a heartbeat, blood pressure, or normal body temperature. Now, if such a patient were simply found in the street, and were to be discovered with no respirations, no heartbeat, absent blood pressure, etc., few physicians would hesitate to declare that patient dead. The diagnosis of death, in other words, is made on the basis of several reasonably obvious criteria. In the case of the patient who is being maintained artificially, those precise criteria which one would examine to declare death are those functions which one is supporting. If one had no need for a respirator, the patient would be breathing or the patient would be dead. Disconnecting the respirator, therefore, in the absence of criteria other than respiration, heartbeat, etc., for death, would be akin to causing death by stopping the patient from breathing. The second component of "passive euthanasia" includes, within it, a notion of a redefinition of death apart from the vital functions which one supports artificially when they fail in life. A polio victim, for example, who is paralysed and requires an iron lung would not be subject to the same discussion as the victim of a plane crash who has suffered almost total decapitation, but who still lingers on as a vegetative organism supported by artificial means.

One approach to the question of death in the presence of artificially supported vital signs has concentrated on the notion of brain death. According to criteria which include: the absence of electrical activity for a certain period of time as monitored by an electroencephalogram, or brain wave test; the absence of reflex functions in the brain stem; the presence of coma in the absence of drug overdose or liver failure; the absence of spontaneous respirations; and, in different places, some other criteria as well, the patient is declared dead even if the heart might be beating, and all external means of life support are disconnected. These criteria were particularly crucial when transplants were first being considered, for the survival of the transplanted organ depended strongly on the condition of the donor.

The two components of "passive euthanasia," then, can be distinguished by the intent of the first component to let nature take its course, and end the life of a patient by means of a potentially reversible compli-

cation not necessarily connected with the underlying pathological process; and the intent of the second, to terminate the biological existence of a patient whose vital functions are maintained artificially by skillful technology, and whose condition, in the absence of these functions, would clearly be death.

Both the arguments of passive euthanasia and the arguments of active euthanasia (having described them, I feel justified in referring to them without quotation marks) have been used in another case as well: the infant who is born very ill or with physical or mental deficiencies. Infanticide, in these cases, is justified, not only by the suffering of the child, but by the suffering of the parents and of society as a whole. The physician, consequently, must use as his teleological consideration more than the principle of benefitting the patient. The patient is implicitly bidden to think of society, the parents, or the family of the child as his patient, and apply the notion of "first do no harm" *beyond* his immediate patient, the child. Passive euthanasia in the case of children usually appears as a decision not to treat; the complications underlying heroic efforts are thereby avoided altogether. Active euthanasia has been espoused as a logical extension of the decision to admit passive euthanasia, and has been described as "more merciful" (i.e., more desirable in view of the underlying principle of doing no harm) for being faster and surer. The entire relationship of abortion to the issue of infanticide is another direction in which this discussion might venture, but, again, I prefer to limit the scope of this essay.

Here, then, is the character of the moral dilemma: a physician, dedicated to compassion and relief of suffering through the use of his medical expertise, is suddenly confronted with a situation where his knowledge fails him. There is nothing he can do, and it seems as though the most merciful act would be putting the patient out of his misery through death. The legal atmosphere in the United States and Britain forbids this alternative at the present time. Neither a doctrine of relief of suffering through death, nor a utilitarian incorporation of social advantage through the elimination of non-contributing vegetative members of society, nor a notion of sparing the parents the suffering and expense of a deformed child balances the legal observation that euthanasia is murder, whatever its motive. The legal viewpoint, in short, is deontological. The ethical argumentation generally follows the path we have outlined. One further argument should be mentioned, however. It is often noted that societies which have, in the past, condoned euthanasia or infanticide of one form or another have been societies whose general moral worth is quite low. Thus, the spectre of genocide follows the establishment of criteria for considering one group in society no longer deserving of support because of its lack of contribution. The fear of political eugenics is evoked by the destruction of imperfect infants. Thus,

the extension of arguments accepting euthanasia is seen, as in *Erewhon*, as a quick fall to other actions which would clearly be morally unacceptable and socially threatening.

The traditional Jewish point of law on these issues is less ambiguous and less troubled than is the secular point. Judaism puts first priority on man's place in this world, and considers it an ethical imperative to continue living. Medicine is permitted so that man shall learn the laws and "live by them" (Lev. 18:5). As Jakobovits points out,<sup>2</sup> Judaism sees no contradiction between expecting man to preserve virtue in this world, and to live for his mundane existence in preference to the world to come, and the concept of this world being but a preparation for the world to come. Certainly, the idea of virtue in Jewish law is a deontological one. The virtuous man is the one who follows Maimonides' codification of the 613 commandments, and who performs each of the required acts and prohibitions.

The range of acts which halakhah permitted, and even required, indicates that the deontological codification had a strong sense of mercy and a deep sensitivity to suffering. The Talmud mentions the verse, "Give strong drink to one ready to perish. . . ." (Prov. 31:6), and the Golden Rule of Hillel, in its discussion, allows a criminal about to be executed to receive obtunding medication (*Sanhedrin* 43a and 45a). A precedent exists, therefore, for relieving the suffering of one about to die.

Medically speaking, the Talmud recognised a state of moribundity, called *gosses*. A patient was called *gosses* when he could no longer swallow his saliva (*Even Haezer*, cxxi, 7). It is generally assumed that this state would last no more than three days (*Yoreh Deah*, cccxxxix. 2). According to some authorities, even if a patient cannot swallow his saliva, if he can be kept alive for more than three days, he is not *gosses* (Rabbi David Bleich, New York; personal communication). Even in this state, however, the patient must be considered a living being, and does not give up any of his rights as a living Jew. Whoever removes the pillow from under the head of a patient who is *gosses*, or does anything at all which hastens his death, is considered criminally culpable of having shed blood (*Yoreh Deah*, cccxxxix. 1). Jakobovits discusses Isserles' amplification of the point forbidding the removal of a pillow from under the head of a *gosses*.

It is forbidden to cause the dying to pass away quickly; for instance, if a person is in a dying condition for a long time and he cannot depart, it is prohibited to remove the pillow or the cushion from underneath him following the popular belief that feathers from some birds have this effect.<sup>3</sup>

Other sources also concur that the life of a dying person must be seen as

2. Immanuel Jakobovits, *Jewish Medical Ethics* (New York: Bloch Pub. Co., 1967), pp. 121-123.

3. *Ibid.*, p. 122.

so delicate that it is threatened by even the smallest movement. Any threat to the thread of life is clearly prohibited. There is some qualification, however; according to the *Sefer Hasidim*, one is prohibited from committing an action which would extend the dying process (*Sefer Hasidim*, nos. 234 and 723).

Active euthanasia is thus prohibited, and one who kills a dying person is subject to the laws dealing with simple murderers (cf. *Sanhedrin* 78a, and Jakobovits, *Op. cit.* p. 306, notes 44–47). Jakobovits indicates the possibility that passive euthanasia, as we have described it, might be acceptable where death is imminent, but his position is complicated by Bleich's restraint that if it is possible to keep a patient alive by some means for more than three days, even in the absence of the ability to swallow, he cannot be considered *gosses*. In short, while halakhah considers the matters of euthanasia and the dying patient at some length, it clearly prohibits active euthanasia, and gives no clear warrant permitting the withdrawal of life-supporting measures in the dying patient. The notion of brain death is altogether absent, although it must be noted that the condition of being unable to swallow one's saliva is equivalent to brainstem death in modern medical parlance, and destruction of the gag reflex. This degree of central nervous system death is not far removed from the definition of brain death now becoming more commonly accepted in medical circles. Consciousness *per se*, however, is not considered grounds for determination of the medical state. Death can be declared only when respiration ceases, and interference with the dying process previous to that is governed by the principles we have just mentioned.

Both by Jewish law and by secular law, the physician is advised to desist from active euthanasia. If it could be shown that a patient would die within three days in the absence of the initiation of a new therapy (the first component of passive euthanasia) and the patient were already *gosses*, a strong case might be made for therapeutic reticence. If the patient were not *gosses*, however, or if it were not certain that he would die within three days, even this warrant would be lacking. The discontinuation of a respirator is quite problematical, and appears to be absolutely prohibited under extant interpretations of halakhah. The consideration of passive euthanasia, then, at least according to halakhah, is perhaps different in principle from the consideration of active euthanasia, but not far removed in practice. Secular law seems more comfortable with some forms of passive euthanasia. The discontinuation of life support, and the reluctance to initiate new therapy is not uncommonly discussed in daily medical practice. Both courses are essentially legitimized in practice.

It has become common, in general medical parlance, to refer to "heroic" and "non-heroic" therapeutic measures. The term "heroic"

is derived from Catholic thinking. According to this differentiation, "heroic" measures are extreme, hazardous, difficult, unusual, and (perhaps consequently) morally unobligatory. "Non-heroic" measures, on the other hand, can be expected of a physician, and are morally requisite. To the extent that passive euthanasia is countenanced in Catholic theology, it is only heroic measures which may be spared. What makes this notion of euthanasia difficult is the tenuousness with which "heroic" is defined. The moment one has decided that a patient is moribund, one is psychologically much more ready to define *any* therapy to be initiated as heroic. What is heroic in one circumstance may not be heroic in another. Emergency surgery on a crowded street after an automobile accident is quite a different matter from the same operation in the operating room of a major hospital. But would a respirator for an eighty year old man with pneumonia be heroic, while a respirator for a thirty year old not be?

Jewish Law does not recognize a *prima facie* distinction between heroic and non-heroic measures in those terms. A specific therapeutic maneuver might be found required or optional at a particular time in the life of an individual patient. It is not, however, that a class of therapies describable as "heroic" is legitimized by such a decision. Whether the decision by a competent rabbinical source, that a given therapeutic maneuver under a special set of circumstances is optional, becomes equivalent to the decision that a heroic measure might be deferred with the intent to commit passive euthanasia, is not clear. At any rate, the distinction between heroic and non-heroic measures bears on, but cannot relieve, the tension between the halakhic commitment to sustain life at all times and the general sense that one ought not interfere with natural processes such as dying.

The Talmud consistently presents a strict formalist approach to the problem of euthanasia. In holding the physician to a position judged in deontological terms, it eliminates the paradox innate when, as in many secular considerations of the problem, the physician is stretched on a teleological frame in one direction, and a deontological one in another. This position does not eliminate the psychological tension between the desire to end suffering and the obligation to submit to a higher set of legal principles embodied in the halakhah. Similarly, it does little to alleviate the specific discomfort of the physician who finds his medical expertise exhausted, his compassion strained, and his hands tied. But the physician may derive one comfort from the Jewish Law: it is recognized that the physician does not always have final responsibility for what befalls his patients, nor full power over their suffering. It is tacitly assumed in the halakhic literature that the physician's knowledge will oftentimes run out, though his desire to help has not. Even under these circumstances, however, the prerogative of euthanasia



is not the physician's. He is not held culpable for the finite limits to medical intervention. The deontological strictness of the Talmudic ruling fits comfortably with the entire body of Talmudical thinking. In holding the physician to a deontological position, it essentially eliminates the paradox in secular considerations of euthanasia. This position does not eliminate the psychological tension between the desire to end suffering and the submission to a higher set of legal principles in Jewish law, and it does little to alleviate the specific discomfort of the physician who finds his medical expertise exhausted, his compassion straining, and his hands tied. One must conclude, from an examination of the halakhic considerations, that one more principle is added to the beneficence which the physician must adopt ubiquitously. The Talmud indicates that the physician does not always have full responsibility for the care, and full power over the suffering of his patient. Where his knowledge ceases—and this epistemological boundary is tacitly assumed—he may not function, and he must leave the decision to a Higher Power. The prerogative of euthanasia is not the physician's.

# *The Vatican and the Jews: Cynicism and Indifference*

JUDAH L. GRAUBART

THERE ARE FEW ISSUES IN THE HISTORIOGRAPHY of the Holocaust that are colored by more emotion and based on less knowledge than the Vatican's response to "the final solution to the Jewish question." In part, these circumstances are attributable to a general historical indifference towards the Jewish fate in World War II. As Gerd Korman has noted, "For most historians World War II cast so narrow a shadow, they almost missed the destruction of European Jewry" (*Societas*, Spring 1973, p. 1 of mss. in writer's possession).

But to dismiss the paucity of historiography on Pius and the Jews as stemming only from scholarly indifference is to avoid confrontation with a more profound set of questions. First among them is, *why* have historians "missed the destruction of European Jewry?" Second, (as a corollary of the first question), why have many students of the Vatican been indifferent to the issue of Pius XII and the "final solution?" Third, regarding the minority of Vatican historians who have written about the Pope and the Jews, what are the implications of their analyses?

The answers to these questions do not lie solely within the historical community. Rather, they are to be found in the community at large. For historians' perceptions are not evolved in a vacuum; rather, they are the outgrowth and, hence, a reflection of the society in which they live. Therefore, to understand what the historical community has said, why it has said it, one must understand the societal attitudes that conditioned its perceptions.

With regard to the historians' apathy towards the Holocaust then, we must first ask: what has been the societal perception of it? Quite logically, the answer may be summed up in one word: apathy. For, as Glock, Selznick and Spaeth observed in *The Apathetic Majority* (1965), Americans were indifferent to Nazi persecutions when they took place, "and remained so after the war. . . ." (p. 169).

But, as noted, societal indifference affected not only historians of World War II, but students of the Vatican as well. Thus, beginning with Camillo Cianfarra's initial study, *The Vatican and the War* (1944), which was the only exception, it was not until 1962 that any such commentators so much as considered Pius XII and the Jews.

Indeed, Cianfarra, in his sole reference to the Vatican and German genocide, merely observes that in response to the

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... ruthless policy of ... extermination which the Germans are pursuing against the Poles, Czechs, and Yugoslavs ... (Pius) ... advocated the preservation of the four national rights of minorities ... culture, language, economic capacity and fecundity (p. 319).

It is pertinent to note that, in wartime America, Cianfarra's book was extraordinarily well received. It was reviewed by no less than thirty-eight Catholic and secular publications, among them *Commonweal*, *America*, *Foreign Affairs*, *The New York Times*, *The American Political Science Review*, and others. Most reviews agreed with the one in *Foreign Affairs*, which described *The Vatican and the War* as "well informed (and) temperate."

This reaction to Cianfarra's book is important as it illustrates the tone that was subsequently to dominate post-war Vatican analyses of Pius' relations with, and attitudes towards, the fascists. That is, there was, with only few exceptions, general acceptance of the idea that the Vatican, (as Cianfarra suggests) was totally committed to the allied cause, an attitude which Pius feared manifesting (once more, according to Cianfarra) lest there be Mussolini-directed retaliation. In point of fact, this analysis was extremely wide of the mark. As noted elsewhere in this paper, Pius was (a) not in complete harmony with the allies, opposing their demand for unconditional Axis surrender; (b) was attempting negotiations to extricate Italy from the war in 1943, hence the need for neutrality; and (c) feared German, not Italian, retaliation for anti-Axis or pro-ally statements.

In 1945, two other biographies of Pius were published, neither of which was of great significance. The first was Charles H. Doyle's *The Life of Pope Pius XII*, which concentrated on Pius' spiritual evolution both as priest and, later, as Pope. In 1945, a brief (130 pages) compendium of wartime Papal messages was released. Edited by Father Reginald F. Walker, it was titled, *Pius of Peace: A Study of the Pacific Works of His Holiness Pope Pius XII in the World War, 1939-1945*.

In 1949, a sensationalist volume, *The Vatican World of Politics*, was published by an author named Avro Manhattan. Devoting only part of his volume to the role of Pius during the war, Manhattan, unlike Cianfarra, suggested that, during the war, Pius had actually been sitting on the fence. Further, the author claimed that the Pope favored a German victory against the Soviets due to the greater freedom which fascism afforded Catholicism.

The book was reviewed by seven Catholic and secular publications (among them, *The New York Times*, *Catholic World*, *Saturday Review of Literature*), and was roundly condemned. Catholic publications viewed it as a vitriolic and bigoted attack on the Church. For its part, the secular press was critical of Manhattan's scholarship and lack of interpretive ability. But, despite Manhattan's very real shortcomings, he did suc-

ceed in asking a question that historians a decade hence would consider. That is, what was the true nature of the Papacy's attitude towards German fascism and Soviet communism?

In November of 1950, Leon Poliakov, a French Jewish historian, published his analysis of Pius and the Jews titled "The Vatican and the Jewish Question" in *Commentary*. Praising Pius XII's predecessor, Pius XI as "... the courageous Pope . . . who severely condemned nazism in his famous encyclical *Mit brennender Sorge* of 1937 . . ." (p. 440) the historian noted that Pius XII adopted "a less forthright policy towards the Nazis." As to the Pope's motivation, Poliakov suggested that "one can only guess; few secrets have been so well kept as those of the diplomacy of the Holy See."

In his strongest criticism of Pius, Poliakov states,

It is painful . . . that . . . (though) gas chambers and crematoria were operating day and night, the high spiritual authority of the Vatican did not . . . protest (p. 443).

Related to his disappointment at the Vatican's silence was Poliakov's judgment that theological anti-Semitism was a factor in the shaping of Papal policy. In effect, he suggested that such attitudes may have motivated Pius to remain silent on discriminatory measures which culminated in the "final solution." (The same point was subsequently made by Gunter Lewy in his study, *The Catholic Church and the Third Reich*.)

But despite these two negative judgments, Poliakov's article was, on the whole, favorable towards the Vatican. He suggested that if the Papacy was "less (than) forthright" in its private actions, it was far more direct. So "there is no doubt that secret instructions went out from the Vatican urging the national churches to intervene in favor of the Jews by every possible means . . ." (p. 441). Poliakov also states that, while there are no statistics on Papal help to Jews, "... it is certain that a great many of the Jewish survivors of the Nazi occupation benefitted from its aid . . ." (p. 443).

It was not until 1959 that the issue of the Vatican during the Nazi era would be broached by a gentile historian; and, then, only in a very indirect sense. In that year, Father Robert Graham published his scholarly study titled *Vatican Diplomacy*. The essential nature of Graham's inquiry dealt with how the Vatican State had functioned over the centuries as a secular diplomatic force. And while the study ignored Pius XII and the "final solution," it suggested an interpretation which would be subsequently crucial to Vatican historiography. Thus, Graham posited that

. . . it is true that the Catholic Church is the only religious body which engages in direct relations with the various states. It is also true that papal diplomacy has cut its own course serenely and independently, leaving at more than one point the well marked road that civil diplomacy is wont

to follow. Nevertheless, in its broad outlines and . . . essential function (it) conforms closely to the genius of diplomacy in general (p. 7).

A year later, in the fall of 1960, Gordon Zahn published an important essay in *Cross Currents* entitled, "The German Catholic Press and Hitler's Wars." This critique bears consideration, not only for its scholarship but, also, for its tone. Zahn was one of the first serious students to adopt a critical attitude towards the German Catholic hierarchy vis-à-vis the Nazis. And, in doing so, Zahn, likewise, became one of the first Catholic historians to suggest, albeit indirectly, Vatican complicity regarding persecution of the Jews.

In his essay, which was subsequently expanded into a book, *German Catholics and Hitler's War* (1962), Zahn concludes that the pre-war and wartime German Catholic press had, in effect, sanctioned Nazi fascism. He further states that the press had supported wars of aggression which could not be characterized as "just" wars according to church doctrine.

Even before the war the Catholic periodicals . . . placed ever growing emphasis on the patriotism and loyalty of the German Catholic population . . . After the German attack on Poland . . . the German Catholic who turned to his diocesan paper . . . as to the justice or injustice of Hitler's aggressive wars or the nature and extent of his obligation to support them would find no equivocation or reticence . . . (p. 343).

In 1962, Rolf Hochhuth's play, *The Deputy*, was published, thus marking another watershed in Vatican historiography. For, while Poliakov was guardedly critical of Pius, and Zahn of the German Catholic establishment, Hochhuth went much further. For the first time a frontal attack was made on the Pope, directly accusing him of moral cowardice regarding the "final solution."

Viewing Hochhuth's drama as a historical document, we find two primary theses posited in the text. The first is the author's condemnation of the Pope for his refusal to protest the genocide of the Jews. Thus, in the concluding lines of Act II, Pius is told by the young priest-protagonist, Ricardo Fontana, that the Pontiff's silence ". . . grants Hitler unrestricted license to go on treating the Jews as he has always done." The Pope limits himself to replying that ". . . the Jews must wait, praying and trusting that the hour of heavenly comfort will come . . ."

As to the second, and, from the historian's standpoint, a more important theme, the question of the motivation for Pius' silence, the playwright develops three basic factors which he feels were responsible for the decision to remain silent. (These factors were to be explored by scholars in subsequent works.) They are (a) an affinity for the German people, based on his days as Papal nuncio to Bavaria; (b) his abhorrence of Bolshevism above that of Nazism (hence, his fear that criticism of Germany might possibly strengthen the Soviets); (c) his belief that, as head of the Vatican State, he must remain completely neutral in order to serve as a diplomatic negotiator between the warring powers.

*The Deputy* elicited strong and diverse reactions from both the historical and the religious communities. As to the former, it is interesting to note that Hochhuth's interpretation either motivated or coincided with a change in the attitudes of Leon Poliakov on this question. Thus, writing in the April 1964 issue of the *Jewish Frontier*, Poliakov stated, in sharp contrast with his earlier assessment that:

At this most tragic moment of modern history, Christianity's highest spiritual authority . . . kept . . . silent . . . what worse could have happened to the Jews . . . (had Pious protested?) . . . Nothing more than what they were already suffering. Not to understand this was to cover one's eyes . . . (p. 443).

As to other reactions, they were so numerous that, in the space of one year, from the time the drama opened on Broadway in February, 1963, until a year later, in February, 1964, nearly 450 English language reviews and articles were published.

The Vatican's response was enunciated by Cardinal Giovanni Montini in the form of an article in the London Catholic weekly, *The Tablet* (June 29, 1964). Though drafted by Montini prior to his election to the Papacy as Paul VI, it was released after his elevation, thus making it an official Vatican pronouncement. Montini defended Pius' silence because "an attitude of protest . . . and condemnation would not only have been futile, but also harmful; and that is the long and the short of the matter" (as quoted in E. Bentley, ed., *The Storm Over the Deputy*, p. 68). Other Vatican apologists assumed a similar line of reasoning, arguing that had Pius spoken out, his statements would have been ineffective in mobilizing the world's 300 million Catholics, as well as the rest of the church hierarchy. Finally, they claimed that, as a neutral, the Church was obligated, as Hannah Arendt caustically put it, "to bless both sides."

Only two years after the publication of *The Deputy*, and a year after its release in America, Gunther Lewy published his study, *The Catholic Church and the Third Reich*, part of which was adapted into a pre-publication article, "Pius XII, the Jews and The German Catholic Church," (*Commentary*, Feb. 1964). Commenting on *The Deputy*, Lewy indicated a general agreement with Hochhuth's conclusions. But, though agreeing, he also felt that there were deeper causes for the Pope's silence.

. . . we must remember that the Nazi assault upon the Jews of Europe took place in a climate of opinion conditioned by centuries of hostility to Jews and Judaism . . . (also) . . . given the indifference of the German population towards the fate of the Jews, and the highly ambivalent attitude of the hierarchy towards Nazi anti-Semitism, a forceful stand by the Pontiff on the Jewish question might well have led to large scale desertion from the church (*Commentary*, Feb. 1964, p. 33).

Lewy also notes that, within the Vatican, there was a tradition of



"moderate anti-Semitism" which caused the Vatican to view the Jewish plight with no "... sense of moral outrage" (p. 33). However, while distinguishing himself from Hochhuth in these respects, the historian's conclusions were similar to the playwright's in others. Thus, Lewy suggests the Pope was unwilling to risk reducing his status as a neutral by condemning the atrocities. He also says that, since Pius abhorred Bolshevism over National Socialism, the Pontiff did not wish to undermine "... Germany's struggle against Russia" (p. 33). And finally, both Lewy and Hochhuth agree in their assessment of the Pope's personality, which subsequent historians were to assess as a major factor in the formulation of the Vatican's response. Pius was "... unemotional and dispassionate as well as a master of diplomatic ambiguity" (p. 33).

Succeeding Lewy's were two more studies which concentrated exclusively on the role and the motivations of Pius in the Second World War period. The first of these, *Pius XII and the Third Reich*, by Saul Friedlander, was published in France in 1964, and in the United States in 1966. In his work, Friedlander bases most of his scholarship on documents of the German Foreign Ministry. However, unlike his historical progenitors, he stops short of any judgments of the Pope's action that might be construed as moral condemnations. But, while avoiding any such judgment about Pius' diplomacy, the author does suggest what he believed were the most probable reasons for the Vatican's silence. Drawing upon Papal statements, correspondence and other records, Friedlander says that the reasons were: (a) the Pope's belief that an even-handed policy towards atrocities must be maintained, for to denounce German war crimes without simultaneously protesting Soviet atrocities, which he knew were taking place, would weaken Vatican credibility; (b) the Pontiff's belief that an attempt to influence German leadership would only be futile; (c) the hope that Papal restraint would save the German Catholic community—as well as other religious groups—from suffering an even more severe fate than had been theirs up to that point.

Three years after the publication of Friedlander's book, *The Silence of Pius XII* by Carlo Falconi was released. Based on the documents of the puppet governments of Croatia and Poland, and on correspondence between the Nazis and the Holy See, it is the most definitive study, to date, of the Vatican's wartime silence. Falconi is the first historian to expand the perspective of Pius' silence beyond the rubric of the "final solution of the Jewish question" to the issue of the genocide of Catholics in occupied countries as well. In so doing, he arrives at conclusions which are quite different from those offered by Cianfarra in his wartime survey of the Vatican.

Falconi suggests that Pius' statements were about the Polish Catholics and the Orthodox Serbs of Croatia and were, actually, quite weak. Indeed, Falconi claims (as does Friedlander) that Pius deliberately avoided

strong rhetoric for fear that such protests might result in Nazi reprisals against Catholics in occupied countries. However, in evaluating this latter factor, Falconi criticizes the Pope, noting that German statements to the Vatican from the occupied countries were "cautious." Thus, while Pius' fears may be understandable, "this type of fear hardly increases our respect for the disinterestedness of (his) silence" (p. 268). Falconi further maintains that even if Pius (and the former Cardinal Montini) were correct, i.e., that protests would have been futile, the Pope should have spoken out anyway, for "... the Gospels . . . have ruthlessly and explicitly condemned silence in the face of moral evil whatever justifications may be found" (p. 268). Beyond these judgments, Falconi believed that the Pope's silence was based on the following factors: (a) the unreadiness of Catholics, especially German Catholics, to accept a Papal denunciation of the war crimes; (b) the fear that protests might somehow weaken the Church's position in the post-War European world; and, to Falconi, the most important factor of all, (c) "... Pius' inability to shed his professional training as a diplomat." This aspect of his personality was the "truest and innermost reason . . . his piety while permeating his ideal conception of existence and his main field of activity, was also "conditioned and restructured by these" (p. 93).

Against this background, the most recent study of the Papacy and the fascists, Anthony Rhodes' *The Vatican and the Age of Dictators (1922-1945)*, can be considered. As its title implies, the study encompasses not only the reign of Pius XII, but, also, that of his predecessor, Pius XI. In this respect, its importance for the historiography of the Vatican's wartime policies is immediately apparent. For it is Rhodes' initial thesis that one cannot fully understand the policies executed by Pius XII without first examining those of his predecessor of seventeen years. Hence, in his brief review of what prior scholars have said about these questions, he observes that

All these writers examine the relations of the Vatican with Nazi Germany without referring to other aspects of Vatican diplomacy in the inter-war years. In this book, an attempt has been made . . . to show that its attitude towards Nazi Germany was the logical sequence of the new foreign policy inaugurated by Pius XI immediately after the First World War (p. 12).

In so expanding the scope of the historiographic debate about Pius XII, Rhodes also makes a second point, which is posited on two inter-related theses. The first is that

. . . the goals of the Vatican are not those of a lay State; they are transcendental, not imminent. Its aim is to save souls . . . (p. 354).

Yet, in having such "transcendental" goals, the Vatican cannot help but conduct itself as a "lay State." Thus, "... the Pope's Power over the Church and its 300 million faithful is such that his actions and pro-

nouncements must inevitably produce political consequences" (p. 14). In view of this intertwining of the spiritual and the temporal, Rhodes asserts that one cannot apply moralistic viewpoints to Papal policies (as do Hochhuth, Falconi, et al) and still have an accurate perception of what occurred. Rather, one must take into account the fact that Vatican policies were based, first and foremost, *not* on universal humanitarian concerns, but on the best interests of the Holy See, interests which sometimes required the Vatican to conduct itself much like a secular state.

Having laid this basis for his study, Rhodes begins with an exploration of the policies of Pius XI, who ascended to the Papacy in 1922 and began a "... new era of Papal politics." A "new era," but, at the same time, one which he believed would maintain "... *permanent* (Rhodes's emphasis) Catholic interests, secure from the whim of transient political systems" (p. 14).

To maintain the "permanent Catholic interests" the Pope formulated definite policies towards both the nascent Soviet Bolshevik and the Italian fascist regimes; policies which were to have very definite bearing on his successors. Hence, in relation to the Communists, the Vatican attitude was one of strong and untempered hostility. Towards Mussolini, its *modus operandi* was one of accommodation rather than condemnation. The reason for this quantitative difference of opposition was that, while the Pope held no brief for fascism,

the Vatican had, of course, much more in common with the Fascist State than with the earlier Liberal regimes. Both Catholicism and Fascism were autocratic, ruled by one man; both were absolutist, admitting no question of their creeds; both insisted on the submission of the individual to the system; both attached importance to external ceremonies and mass psychology . . . (p. 30).

With such a *modus operandi* then, the Holy See, under the direction of Pius XI, pursued its interests, "... resisting on the one hand the disruptive influence of Bolshevism and on the other hand attempting to moderate the fanatical new nationalism in Germany and Italy" (p. 21).

During the period of Pius' reign there was issued what would eventually prove to be the most important Vatican response to German fascism, *Mit brennender Sorge*. The chronicling of this matter, occupying a full chapter in Rhodes' study, deserves careful scrutiny in terms of understanding the author's *realpolitik* approach to Vatican policies.

The encyclical was a damning indictment issued by Pius XI in March 1937. In it, he speaks of anti-Catholic persecution that is "illegal as it is inhuman," while denouncing the Nazi pressures on Catholics to abandon their faith as "base, illegal and inhuman." Though most historians have interpreted the encyclical as a moral denunciation of German fascism, Rhodes brings in an additional factor, seeing it as having arisen

from temporal, political concerns. For the encyclical was issued only after it became clear to the Vatican that there was no “. . . chance of agreement with Germany . . . on a common front against (the) Communist . . .” backing of the Republican forces in the Spanish Civil War (p. 202). Thus, *Mit brennender Sorge* was, most assuredly, a courageous denunciation of moral evil; but it was a courageous denunciation which, had political circumstances been different, might never have been issued.

Two years after the publication of *Mit brennender Sorge*, Pius XI died. He was succeeded by the man he had all but literally ordained as his successor, the Vatican Secretary of State, Eugenio Pacelli. As Rhodes observes, by making clear his desire for Pacelli to succeed him, Pius was providing for the continuation of his own policies. Given Pacelli's political views and his diplomatic experience, he was, indeed, the man who could, as the aged Pope believed, best maintain the Vatican's interests in the turbulent future.

With Italy's entry into the war on the side of the Axis in 1940, Pius XII was called upon to utilize all of his diplomatic skill to protect the Vatican interests. However, in so doing he caused “. . . the high . . . prestige (of the) Papacy (to) decline, (as) . . . its sentiments were . . . discreetly adjusted to the exigencies of an anxious neutrality . . .”

But it was not only considerations of neutrality that motivated Papal policy. For, as Rhodes notes, the Pope blended the temporal and the spiritual and envisioned himself, like Innocent XI, as a unifier of the nations of the “Christian West against the Infidel . . .” (p. 261); i.e., the Bolsheviks.

Yet, it was only later that Pius came to expect that he would fulfill this unifying post-war role against communism. It was his initial hope that the conflict would result, first, in the destruction of Soviet communism and then in the destruction of German fascism. The rationale for the chronology of this scenario was that, while both forces were pernicious to the Vatican, it was still essential that, regarding the *final* outcome, Russia not be accorded a part in the victory. If it were, then the Pope believed that such a victory would be of the communist system. Hence, the early hope for a destruction of Russia (ergo communism) by Germany, and then the elimination of German fascism by the Allies.

But such expectations, as the Pope soon learned, were not to be fulfilled. In September, 1942, Presidential envoy Myron Taylor secretly informed Pius that it was the allied intention totally to eradicate Nazism. Moreover, Taylor explained, since the United States and Great Britain then enjoyed a close relationship with the USSR, the Soviets would exercise a major voice in the shaping of the post-war world order. As Rhodes observes, “this was hardly welcome news . . . Msgr. Tardini” (the Vatican Secretary of State) “. . . notes about the conversation with Mr. Tay-

lor, 'the Americans are preparing to reorganize Europe . . . and (they) may cause tremendous damage . . . ' p. 267).

Faced with what the events seemed to confirm as an eventual *fait accompli* of an allied-Soviet victory, the Vatican's wartime "neutrality" became less pronounced. Thus, in his Christmas 1942 broadcast, "perhaps the most important made by the Pope during the war," Pius was unprecedentedly forthright in his condemnation of totalitarianism. Further, as Rhodes states, "the most important part of his address concerned 'the hundreds of thousands who . . . have been condemned to death . . . ' a clear enough reference to the Jews . . . "

In commenting on Pius' Christmas broadcast, and in subsequent analyses of Papal statements on the Jews, Rhodes again posits a unique and very important interpretation. He suggests that, although the Pope frequently protested on behalf of the Jews, because of his diplomatic training and because of temporal exigencies, his wording was such that, in retrospect, the protests appear inadequate. Yet their meaning, as Rhodes notes, was not lost upon the Germans. As stated in a report by Reinhard Heydrich, Himmler's deputy, on the Papal broadcast of December, 1942, the Pope was " . . . virtually accusing the German people of injustice towards the Jews, and makes himself the mouthpiece of the Jewish war criminals" (p. 272).

In attempting to buttress further the strength of Pius' response, Rhodes cites others who paid tribute to Papal rescue efforts on behalf of the Jews. But, in so doing, he also exposes certain weaknesses in both his scholarship and his logic. Thus, he quotes at length from Pinchas Lapide who, in his 1972 volume, *Three Popes and the Jews*, maintains that " . . . the Catholic Church under the Pontificate of Pius XII was instrumental in saving probably as many as 860,000 Jews from . . . death at Nazi hands" (p. 269). Lapide, however, is an unconvincing source. Though maintaining that his conclusions are based on material in Yad Vashem, the Zionist Central Archives, and interviews with Holocaust survivors, he offers no documentation for them. Moreover, his arguments in defense of Pius merely restate those of previous Vatican apologists.

Besides citing an inadequate study, Rhodes' other "documentation" of effective Papal action in behalf of Jews is similarly weak. His brief citation of two private statements praising Pius read more like testimonials than factual reports on Papal efforts.

But, in the final analysis, when viewed as a contribution to the still embryonic field of Vatican historiography, *The Vatican and the Age of Dictators* does have importance. Indeed, it is an importance that relates both to the student of history and to the student of society. Historically, the book is important because it offers a new avenue of approach to the either/or dilemma of Pius XII and the Jews; i.e., either Pius was a si-

lent assenter to the murder of six million Jews, or he was their silent saviour. Rather, Rhodes suggests (as does Robert Graham) the Vatican was neither. It was a spiritual state acting in a secular vein. However, Rhodes further maintains that the Pope, as the Vicar of Christ, is the head of a transcendental state, whose aim “. . . is to ‘save souls’ . . . (and) . . . to obtain the best conditions for achieving this in the various states, of *whatever political colour* . . .” (p. 354) (my italics). As the head of that transcendental State, the Pope took whatever steps were politically and diplomatically *feasible* (my italics) to ameliorate the plight of the Jews. As to whether those measures (or lack of them) were *morally* sound, is, for Rhodes, not the issue. What *is* the issue is that since the Pope is as *political* as he is transcendental, he cannot achieve the latter ultimate goal without first engaging in the former penultimate condition.

In establishing this amoral, power-politics basis for evaluating Pius’ policies, Rhodes raises some extremely important questions as to society’s (and perhaps even contemporary Catholicism’s) attitudes towards the Holocaust. For, just as previous students of Vatican policies manifested their era’s perceptions of Jewish suffering, so, too, Rhodes’ study of this question manifests present day attitudes. To understand how, a brief review of previously outlined historiography is required.

As noted earlier, because initial historians of the Vatican in World War II were apathetic toward the Holocaust, they said next to nothing about Pius and the “final solution.” But, beyond their apathy, another factor tempered their perceptions (or lack of them) regarding the Pope and the Jews. That was that their researches took place during what might be called the post-war era of idealization, which extended into the early 1960’s, and which saw Western man perceive his society’s institutions in a highly idealized form. And, among the most idealized of those were the Church and the Pope. This is a perception that is clearly maintained by Cianfarra in his extremely inaccurate portrayal of Pius XII (a study which, it will be recalled, was quite well received). Hence, given this tenor of idealization, it would have been unthinkable for anyone seriously to question Papal policy towards the Jews (if, indeed, anyone cared). To do so would have been to call into question the righteousness and morality of one of Western society’s most basic institutions.

In the early 1960’s, however, Western man’s faith in his post-war societal institutions began to crumble. And, as it did, the issue of the Jewish experience in the war became, for the first time, confrontable. If political leaders could be assassinated, if democratic governments could wage unjustified wars (e.g., Viet Nam), and if fundamental church dogmas could be challenged, then, surely, Papal policies towards the Jews could be viewed with some skepticism. Thus, throughout this era of upheaval, the excoriation of the Pope by men such as Hochhuth and Falconi followed quite naturally. If this was an era of institutional blame



and *mea culpa*, then what greater institutional blame could there be than of Pius and his policies towards the Jews?

But in the 1970's, as Rhodes clearly demonstrates, we have entered a new era, an era of cynicism concerning churches and institutions, and of indifference towards humanity and suffering. An era of cynicism and indifference which states that the Vatican, exactly like temporal societal institutions, has every right to an amoral function. Even though it is led by the Vicar of Christ and is the fount of his teachings, its errors and aberrations are merely matters of political course. Therefore, in terms of the Vatican and the age of dictators, whether or not the Holy See did all it could for the Jews is not the principal issue. Rather (according to Rhodes), the issue is simply the Vatican's temporal pursuit of its "transcendental" self-interest regardless of what the consequences of that pursuit might have been for Europe's Jews.


If, indeed, Vatican pursuit of transcendental, but, nonetheless, self-interest is the logical conclusion of Rhodes' historiography, one must inquire as to its significance in relation to the contemporary turns of Papal policies towards the Jews. Specifically, how is one to apply the conclusions of this aforementioned study to the recently published "Guidelines of the Vatican Commission for Religious Relations with the Jews"? While Jewish spokesmen have praised many of the document's statements as "constructive and timely," such individuals have likewise raised questions about the Guidelines' intent. As Rabbi Marc Tanenbaum, Co-Secretary of the International Jewish Committee on Interreligious Consultation, has observed, the promulgation of a "conversionary approach to the Jewish people" suggests "that the election of Israel as a covenanted people has somehow been terminated," and raises "doubts about the motivation of the entire program" (*N.Y. Times*, Jan. 11, 1975). Thus, one cannot avoid the conclusion that if such "doubts" are realized (and one would hope they would not be), they will fulfill the historiography which suggests that the Vatican's theology is a theology of statecraft.

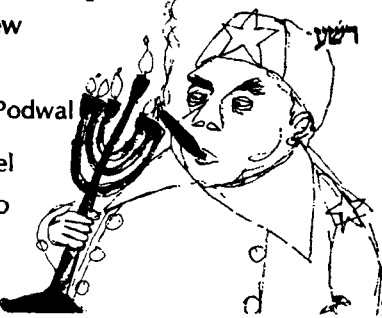
Yet, if the Vatican does re-emerge as a spiritual power in pursuit of temporal interests, that would not prove unexpected, in the light of contemporary world circumstances. Throughout all elements of modern society there is a willingness to regard the service of humanitarian interests as only an adjunct of national interests. Witness: a world conference of hunger and famine which produced verbose resolutions but few concrete efforts designed to ameliorate the very problem which was its *raison d'être*; the spectacle of an international organization dedicated to world peace and understanding according unprecedented prestige to terrorist leaders; and even the United States, a government based upon principles of "equality and justice for all," appearing to negate the very concept of those hallowed words.

In the final analysis, the apparent impossibility of reconciling the secular pursuits of a purely religious state may be resolved by viewing that dilemma in the context of the society at large whence that dilemma rises. It was Western society's cynical indifference to Jewish suffering which forced the Vatican into a position of having to choose between its own best interests and a total dedication to the saving of Jewish lives (but not souls). Today that societal cynicism and indifference, originally demonstrated towards a suffering Jewish population, has returned, with its specter of all-engulfing political and human deprivation, to haunt Western man.

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# *Freud and Judaism: An Analysis in the Light of his Correspondence*

LÉON VOGEL

*Translated from the French by Murray Sachs.*

SIGMUND FREUD'S MEMBERSHIP IN THE JEWISH people, and his comportment towards the world Jewish community, were issues which concerned the father of psychoanalysis throughout his life, from early childhood until his death. It would, therefore, seem worthwhile to examine the specifics of his relationship to the Jewish people and the Jewish religion over the years, by subjecting Freud himself to a sort of "Freudian analysis," the better to grasp how his mind worked and what his attitude really was on the subject.

We can do no more than imagine Freud on the couch, with posterity in the role of analyst. But genuine, non-imaginary psychoanalytic material does exist in abundance, in the form of hundreds of personal letters. The careful reading of these letters, freely and spontaneously written, affords us an authentic means of perceiving the true nature of Freud's bearing towards Judaism.

It should be emphasized that it is not at all the purpose of this analysis to criticize Freud's scientific writings, or to call into question the value of his major discoveries in psychology and psychotherapy. The very limited objective here is simply to explore his behavior towards Judaism in the light of his personal correspondence, which contains the raw material for his one book related to Judaism, *Moses and Monotheism*, the writing and publication of which occupied and preoccupied him throughout the latter half of his long life. *Moses and Monotheism* was destined, in fact, to be the very last publication of his career, and its composition had a troubled history. Doubtful about the early drafts, Freud kept the manuscript in his desk for years and made major revisions before permitting partial publication in Vienna in 1937. The following year, having fled to London from the Nazis, he permitted the full definitive text to be printed for the first time, in an English translation.

The legendary figure of Moses had exercised a considerable fascination upon the mind of Freud long before he began the writing of this last book. As early as 1912, when he was visiting Rome alone, Freud used to go daily to the Church of San Pietro in Vincoli, which houses

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Michelangelo's famous statue of Moses, in order to study it, measure it, and sketch it, until he could awaken in himself the fullest possible comprehension of that masterpiece. The statue was the subject of a non-psychoanalytical essay, "The Moses of Michelangelo," published in 1914.

After this solitary, daily contact with the statue, during which he seems to have experienced a kind of ecstasy, all references and allusions to Moses disappear from his letters for a long period of years. One may suppose that this exceptionally vivid image of the statue became deeply buried in Freud's subconscious, only to emerge twenty years later and to take on even vaster dimensions and significance for him.

Freud himself has described the unexpected manner in which this image came to the surface of his consciousness. In a letter of 30 September, 1934, to Arnold Zweig, who had complained of having had no news from him in a long while, Freud explains his long silence as the unforeseen consequence of what he himself was writing, and not his reluctance to discuss what Zweig was then writing: "... I have written something myself and this, contrary to my original intention, took up so much of my time that everything was neglected."<sup>1</sup> Freud goes on to explain that his subject is Moses, and the starting-point, anti-Semitism:

Faced with the new persecutions, one asks oneself again how the Jews have come to be what they are and why they have attracted this undying hatred. I soon discovered the formula: Moses created the Jews. . . . The material fits into three sections. The first part is like an interesting novel; the second is laborious and boring; the third is full of content and makes exciting reading (pp. 91-92).

In the same letter, however, Freud informs Zweig that he does not intend to publish what he has written, because it involves a "theory of religion—certainly nothing new for me after *Totem and Taboo*, but something new and fundamental for the uninitiated. It is the thought of these uninitiated readers that makes me hold over the finished work" (p. 92). Freud explains that, in the atmosphere of Catholic orthodoxy which obtains in Vienna, he fears that publication of this work might lead to a ban on psychoanalysis and the suspension of the right of psychoanalysts to publish their findings. "If this danger involved me alone, I would be but little concerned, but to deprive all our members in Vienna of their livelihood is too great a responsibility" (p. 92). As an afterthought to this point, he concludes: "And in addition there is the fact that this work does not seem to me sufficiently substantiated, nor does it altogether please me. It is, therefore, not the occasion for a martyrdom."

It was, thus, clear that the Moses study would not leave his imagination in peace, even though the times were ill-suited to the subject. It

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1. *The Letters of Sigmund Freud and Arnold Zweig*, Ernst L. Freud (ed.), tr. by Elaine and William Robson-Scott (New York: Harcourt, Brace and World, 1970), p. 91.

should be recalled that, in 1934, Hitler was already in power in Germany, and that many German Jews were leaving for Palestine, as Arnold Zweig had already done himself. Freud, however, never considered going to Palestine, nor even leaving Vienna. We shall see later the reasons which impelled him to stay in Austria as long as he did.

Let us now try to summarize as briefly as possible the contents of *Moses and Monotheism*, a summary which is indispensable to any understanding of the movement of Freud's mind, the evolution of his ideas in those years, and of his deepest motivations, both conscious and unconscious.

The book's first affirmation is that Moses is an Egyptian. Contrary to the Bible, which asserts the existence of this Moses as organizer of the exodus from Egypt and as privileged interlocutor with God, somewhere about the fourteenth or thirteenth century before the modern era, Freud considers that the name Moses, "he who is drawn from the water," is not likely a Hebrew name but, rather, an Egyptian name meaning "child." Applying the techniques of psychoanalysis, Freud concludes that the story of Moses as recounted in the Old Testament is no more than the transcription of a myth that was widely disseminated in antiquity, and that had been analyzed by Otto Rank as "the myth of the birth of the hero," common to all ancient peoples.<sup>2</sup> Freud recalls that in all variations of the myth, Rank found fantastic details, especially regarding the birth and early years of kings and princes, or of founders of a religion. A myth of surprisingly similar pattern to that of Moses attached itself to the most widely disparate historical figures, such as Sargon, the founder of Babylon, Cyrus, Romulus, Perseus and others.

From the psychoanalytic point of view, Freud explains, the placing of a child in a basket on a river seems an evident, symbolic representation of birth itself, the basket being the womb and the water the amniotic fluid. Again borrowing from Rank, Freud notes the uniform elements of the myth in which the life of the newly-born child will be played out between two families: the first, noble and royal, abandons the child; the second, in modest circumstances, takes him in and raises him. The social contrast is designed to underline the heroic nature of the great man.

To be sure, the case of Moses is a bit different from the typical myth, since the Bible tells us that a modest family abandons the child and the Egyptian royal family brings him up as its son. Freud explains the difference thus:

Eduard Meyer and others after him supposed the original form of the myth to have been different. Pharaoh had been warned by a prophetic

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2. Sigmund Freud, *Moses and Monotheism*, tr. by Katherine Jones (New York: Vintage Books, 1955), pp. 7-9. The 1909 study by Otto Rank to which Freud refers was published in English as *The Myth of the Birth of the Hero* (New York, 1914).

dream that his daughter's son, would become a danger to him and his kingdom. This is why he has the child delivered to the waters of the Nile shortly after his birth. But the child is saved by Jewish people and brought up as their own. "National motives," in Rank's terminology, had transformed the myth into the form now known by us (*Moses and Monotheism*, p. 11).

In Rank's opinion, reasons of Jewish nationalism caused the legend to be recast along those lines, in order to make a Jewish national hero of Moses. The Egyptians had no reason to glorify Moses, who was no hero to them, whereas the Hebrews had a need to create such a legend in order to give their leader a glorious role. Freud then develops his own hypothesis, based on probable reality. One of the two families being fictional, invented for the needs of the myth, and the other real, Freud concludes that Moses must, indeed, have been an Egyptian of noble birth, and not, as the Bible makes him, a Hebrew. Freud reaches his conclusion because of two characteristics of the Biblical myth: the abandonment of the child to the Nile's waters is transformed into a means of saving him and, contrary to the careers of other heroes who rise in social position in the course of their lives, Moses reduces himself to the level of the children of Israel who are slaves of the Egyptians.

Freud concedes, of course, that in the absence of documentation it is not possible to attain historical certainty in the matter. But starting from his basic hypothesis that Moses is Egyptian, Freud sees broad exploratory perspectives for explaining the special features of the laws and religion which Moses gave to the Jews, and for understanding the origin of monotheistic religions in general.

But how can one imagine that an Egyptian of noble birth would become the leader of a strange, immigrant tribe and would leave his country with them? And how explain that the religion which he founded among them, Mosaic monotheism, contrasts so totally with the limitless polytheism of his own people, the Egyptians? The explanation for these improbabilities Freud finds in an incident of Egyptian history of the XIVth century before the Christian era, during the reign of the powerful 18th Dynasty. The Pharaoh Amenhotep IV undertook to impose on his subjects a new religion, fundamentally different from that of his ancestors, demanding rigorous belief in a single god and, therefore, intolerance of those who held otherwise.

Basing himself on James H. Breasted's *A History of Egypt* (New York, 1905), and the work of other Egyptologists, Freud gives this account of Egyptian monotheism: The new religion started at Heliopolis, among the priests of the Temple of the Sun, who tended to conceive of a universal god whose essence was his ethical character. It was this sun god, named Aton, whom Amenhotep IV accepted as the focus of his new religion, which worshipped not merely the material and visible sun, but the sun as symbol of a divine being whose energy is manifested

by the sun's rays. Adoration of this sun, symbolic of creativity and protection, is found expressed in hymns carved on gravestones, according to Breasted, hymns comparable to the Hebrew Psalms of a few centuries later in honor of the Jewish God, Yahveh.

Amenhotep's religious reform naturally encountered the violent opposition of the priests of the old religion, whose privileges were threatened. Amenhotep, therefore, changed his name to Ikhnaton, thus replacing the old god Amon with the new god in his name, and established a new capitol city, abandoning Thebes. He closed the old temples and confiscated their property, to the serious discontent not only of the deposed clergy but of the Egyptian people generally, among whom the new religion had not become popular. Upon Ikhnaton's death, the new pharaoh returned to Thebes and reinstituted the cult of Amon.

Thus, for Freud, if Moses is an Egyptian, the primitive religion which he gave to the Hebrews was that of Aton, god of the sun. Freud points to the similarity between the name of the Egyptian god, Aton, and the Hebrew appellation Adonai, and to the fact that strict Jewish monotheism, in its earliest form, admits of no life after death, as is the case with the religion of Aton, distinguishing itself thereby from the cult of Osiris. There is also the practice of circumcision, long existent among the Egyptians, which the Hebrews later adopted. Freud argues that the Old Testament treatment of circumcision as a rite of the covenant between God and Abraham was a later invention made for reasons of state.

Freud's theory is that Moses, an energetic, driving member of the royal family, committed to Ikhnaton's new religion, saw all hopes for his own future collapse with the pharaoh's death. In those circumstances, he preferred to give up his homeland and to emigrate with several Semitic tribes to found a new empire dedicated to the religion which the Egyptians had spurned. Freud then supposes that Moses, established as leader of the Semitic tribes, recently freed from Egyptian control, conducted them to the land of Canaan.

Freud next undertakes to call into question the entire Biblical narrative of the Hebrew tribes' journey through the desert and of the giving of the ten commandments on Mount Sinai. He proposes the theory that tradition has fused into one existence two quite distinct figures bearing the name Moses. Following the Biblical scholar, Eduard Meyer, he asserts that the Hebrew tribes who ultimately formed the people of Israel adopted a new religion when they came into contact with an Arab tribe south of Palestine called the Midianites, worshippers of a god of volcanoes named Jahve. The Biblical Moses, says Meyer, was a humble shepherd, and son-in-law of the Midianite priest, Jethro, who introduced his Midianite religion to the Hebrews, and is distinct from the Biblical figure, also named Moses, who led the Hebrews out of Egypt. From



another scholar named Ernst Sellin, Freud took the idea that Moses was actually killed by the Hebrews who were bent on ridding themselves of Mosaic religion. Although Sellin's view never won acceptance among his fellow scholars (and was subsequently abandoned by Sellin, himself [R.G.]), Freud credited it because it concurred with the hypothesis of *Totem and Taboo*, that religious traditions tend to contain symbolic representations of the murder of a father by his sons.

Freud thus hypothesizes that the tribes which came out of Egypt, under the leadership of an Egyptian Moses, joined eventually with related tribes, long settled south of Canaan, and that the fusion of the two groups, under a common religion derived mainly from the Midianite god, Jahve, made up the new Jewish nation. It was, however, an unstable fusion, splitting eventually into the two kingdoms of Judah and Israel, because the tribes which had come from Egypt had a more advanced culture than did their primitive desert-dwelling brethren.

Having argued that Moses was Egyptian, Freud now analyzes the role of the clerical Levites, who occupied the most significant positions in the social hierarchy of the Jewish nation. He concludes that, originally, they must have been Egyptians also, supporters, functionaries or scribes of the religion of Aton, who joined Moses in exile, and who, as an educated, activist core of defenders of his religion, were notably superior in culture to the rest of the Jewish nation. Freud thus denies the Hebrew origin, not only of Moses himself but, also, of all the intellectual leadership of the tribes. As for the problem of the two separate figures of Moses, Freud readily explains that the Egyptian leader had never reached the east banks of the Jordan with the tribes whose leadership he had assumed. The other Moses, a later figure, and the source of the Midianite god of volcanoes in the Jewish religion, gradually merged with the Egyptian Moses in historical memory, to form a single national hero.

The final difficulty which Freud needed to overcome in order to make his reinterpretation of the Old Testament convincing was to explain the existence of the narrative of the Patriarchs, Abraham, Isaac and Jacob. His view is that the Patriarchs were Canaanites, either real individuals, or divinities of local tradition, whom the immigrant Hebrew tribes appropriated retroactively into their national history in order to make their settlement on that land a return to the territory of their ancestors. With this hypothesis, Freud may have been seeking to justify to himself his own refusal of solidarity with those who advocated Jewish emigration to Palestine. It should be added that Freud's hostility to Zionism and to the future state of Israel had even deeper roots in his conscious and subconscious mind, a point to which we shall return later.

The third part of *Moses and Monotheism* deals with monotheism and with religious phenomena in general. Freud had, of course, never made any bones about being himself a thorough-going non-believer, and

in such earlier books as *Totem and Taboo*, and *The Future of an Illusion*, as well in his correspondence with the Swiss pastor, Oskar Pfister, he had developed the idea that religions were neuroses on a mass scale, expressing in symbol and ritual the same fears and drives that Freudian psychology held to be at the root of individual emotional disorders. Now, in his last book, Freud argues that the establishment of Jewish monotheism and its continuation into Christianity is a clear-cut example of a specific neurosis. For if the insistence on one god restores the father figure to his ancient tribal role, it also reminds the believers of their repressed guilt at having long ago killed the father in order to occupy his place.

In founding Christianity, Paul of Tarsus rids himself of this threatening guilt: the holy communion ceremony becomes a harmless totemic reenactment of the murder of the father figure, and Christianity becomes the religion of the son, where monotheistic Judaism had been the religion of the father. Moreover, the concept of redemption effectively exorcised the specter of guilt inherent in Judaism, and Paul's abandonment of the circumcision ritual symbolizing the chosen people opened the way for Christianity to become a universal religion, available to all. By contrast, the religion of Moses, in Freud's estimate, would remain in a fossil state. But why has the Jewish people, nevertheless, remained so faithful to its monotheistic religion? Freud's answer to this question is of key importance for his demonstration.

The Jewish people, Freud argues, renewed man's original crime, parricide, in the person of Moses. The murder of Moses by the Hebrews constitutes an important link between the forgotten (or repressed) event of primitive times, and its subsequent reappearance in the form of monotheistic religion. It was repentance for the murder of Moses which provoked the fanatical desire for a Messiah:

If Moses was this first Messiah, Christ became his substitute and successor. Then Paul could with a certain right say . . . "See, the Messiah has truly come. He was indeed murdered before your eyes." Then, also, there is some historical truth in the rebirth of Christ, for he was the resurrected Moses and the returned primeval father of the primitive horde as well. . . . The poor Jewish people, who with its usual stiff-necked obduracy, continued to deny the murder of their "father," has dearly expiated this in the course of centuries (*Moses and Monotheism*, p. 114).

Freud continues his demonstration at great length, now employing his own well-developed concepts of the id, the ego, repression, and the unconscious as these apply to religions as cases of collective psychopathology. But these succeeding sections of *Moses and Monotheism* have no relevance to the subject of Freud's relationship to Judaism.

In a letter of 1938, written to Charles Singer, professor of the history of science at the University of London, concerning the publication in English of *Moses and Monotheism*, Freud asserts at the outset that it is

a piece of research based on psychoanalytical hypotheses about the origin of religions, and particularly of Jewish monotheism, and that it is not his purpose to attack religion. Then, acknowledging his own atheism, he continues in the following odd fashion:

Anyone considering the book from this point of view will have to admit that it is only Jewry and not Christianity which has reason to feel offended by its conclusions. For only a few incidental remarks, which say nothing that hasn't been said before, allude to Christianity. . . .

Needless to say, I don't like offending my own people, either. But what can I do about it? I have spent my whole life standing up for what I have considered to be the scientific truth, even when it was uncomfortable and unpleasant for my fellow men. I cannot end up with an act of disavowal. Your letter contains the assurance . . . that everything I write is bound to cause misunderstanding and—may I add—indignation. Well, we Jews have been reproached for growing cowardly in the course of the centuries. (Once upon a time we were a valiant nation.) In this transformation I had no share. So I must risk it.<sup>3</sup>

This seeming acquiescence in the reproach of Jewish cowardice, when considered against the political situation of 1938 when millions of Jews were caught in the Nazi net, starkly reveals the distance he had travelled since his youth. In one of his earliest letters addressed to his fiancée, Martha Bernays, in 1882, Freud delightfully tells of his encounter with an old stationer in Hamburg, to whom he had gone for letter paper. The stationer was unshaven, he explained, because he was observing the fast day commemorating the destruction of the Temple in Jerusalem. Freud concludes his letter: “. . . even if the form wherein the old Jews were happy no longer offers us any shelter, something of the core, of the essence of this meaningful and life-affirming Judaism will not be absent from our home” (*Letters*, p. 19).

In 1885, following an evening spent at the home of an older, quite prominent colleague, Freud wrote to Martha that, in spite of the rather vain character of his host, one could not help respecting certain traits in him, and especially that he displayed “no shame at being a Jew” (*Letters*, p. 166).

Freud had joined the B'nai Brith lodge of Vienna as early as 1897. Invited to a B'nai Brith celebration of his seventieth birthday, in 1926, Freud sent his regrets to the lodge president because he could not attend personally, and declared how happy he had been to find among the members of the lodge so select and friendly a group, in contrast to those professionals and others in his past who had deserted him after his discoveries in the field of sexuality and his first insights concerning psychoanalysis. The fact that the lodge's membership was exclusively Jewish, he added, could only please him for, being Jewish himself, to deny it would seem to him both undignified and foolish. Indeed, what

3. *Letters of Sigmund Freud*, Ernst L. Freud, (ed.), tr. by Tania and James Stern (New York: Basic Books, 1960), pp. 453-454.

attached him to Judaism, he insisted, was neither the faith nor national pride, but those many intangibles which make Judaism and Jews irresistibly attractive:

. . . many dark emotional powers all the stronger the less they could be expressed in words, as well as the clear consciousness of an inner identity, the familiarity of the same psychological structure (*Letters*, p. 367) .

However, simultaneously with these warm sentiments, Freud was elsewhere expressing a certain distance between himself and Judaism. In a letter to Princess Marie Bonaparte in that same year, 1926, he wrote with some irony of the birthday felicitations he had been receiving:

The Jewish societies in Vienna and the University in Jerusalem (of which I am a trustee) , in short the Jews altogether, have celebrated me like a national hero, although my service to the Jewish cause is confined to the single point that I have never denied my Jewishness. The official world—the University, Academy, Medical Association—completely ignored the occasion. Rightly, I think; it was only honest. I could not have looked upon their congratulations and honors as sincere (*Letters*, p. 368) .

The truth would seem to be that Freud could not quite manage to conceal his disappointment, as well as his resentment, over the fact that the establishment, “the official world,” had totally ignored his birthday. This meant that Freud had not yet succeeded in overcoming the accusation that he had fought throughout his long career, namely, that psychoanalysis is a product of “the Jewish mind.” Freud’s vehement denunciation of this charge is fully justified, since psychoanalysis, as a scientific method, is neither Jewish nor Catholic nor pagan. But Freud never really mastered his own obsessive ambition to win the recognition of the non-Jewish scientific world. The great majority of his disciples in Vienna were Jewish, and when he learned that a Christian psychiatrist in Zurich, C. G. Jung, had become interested in psychoanalysis, he was unabashedly delighted and flattered.

In his preface to the French edition of the correspondence between Freud and the Swiss pastor, Oskar Pfister (Paris, 1973) , Daniel Wildlocher does not hesitate to stress the great importance which Freud attached to Jung’s embracing psychoanalysis. Quite apart from Jung’s brilliant qualities, Freud declares himself especially reassured by the adherence of a man who was not at all a part of his own cultural milieu. “Jung is not Jewish,” notes Wildlocher, “and Freud is convinced that the spread of psychoanalysis cannot be accomplished if it develops in an exclusively Jewish milieu.”

One can obviously raise questions about this conviction of Freud’s, which is in contradiction to his own thoroughly justified opinion that a scientific theory has no sectarian character. But Jung was an official personage, a member of the establishment. Freud’s opportunism was painfully evident as he hastened to designate Jung as his heir, saying,

in a letter to him, "If I am Moses, then you are Joshua and will take possession of the promised land of psychiatry, which I shall be able to glimpse only from afar."<sup>4</sup>

Freud's disappointment was, of course, to be intense when Jung openly declared his disagreement with Freud's theory of sexuality. The result was a dramatic public break between the Viennese and the Swiss schools of psychoanalysis, in the heat of which Jung characterized Freud's theories as inherently Jewish and unadaptable to Christian society.

In the 1930's, Freud managed to make surprisingly complacent accommodations to the growing political crises around him. In 1934, after an attempted Nazi "Putsch" in Vienna, which failed, Freud began a letter to his son, Ernst, with the laconic remark that it was vexing to be without electricity for twenty-four hours. He then goes on to discuss the outlook for the future:

The future is uncertain; either Austrian fascism or the swastika. In the latter event we shall have to leave; native fascism we are willing to take in our stride up to a certain point; it can hardly treat us as badly as its German cousin (*Letters*, p. 520).

At a time when many European Jews were uneasily pondering the wisdom of taking refuge in Palestine, Freud could write to Arnold Zweig, just back from a visit there:

. . . how strange this tragically mad land you have visited must have seemed to you. Just think, this strip of our mother earth is connected with no other progress, no discovery or invention—the Phoenicians are said to have invented glass and the alphabet (both doubtful!), the island of Crete gave us Minoan art . . . and so on ad infinitum—but Palestine has never produced anything but religions, sacred frenzies, . . . And we hail from there (though one of us considers himself a German as well; the other does not).<sup>5</sup>

The remark betrays an astonishing blindness on the part of a man of Freud's calibre to the very real contributions made by the Jewish religion to all aspects of Western culture. One is equally amazed that, two years later, in the face of Nazi persecutions, Freud found it possible to accuse the victims, and not the persecutors ("Faced with the new persecutions, one asks oneself again how the Jews have come to be what they are and why they have attracted this undying hatred," he had written to Arnold Zweig as we noted earlier). His explanation of anti-Semitism, suggested in *Moses and Monotheism*, seems strangely unreal, composed as it was during Hitler's wholesale destruction of the Jewish communities of Europe, and the frantic efforts of Zionism to save the lives of a few hundred thousand German Jews. It is hardly credible that Freud was

4. *The Freud-Jung Letters*, William McGuire, (ed.), tr. by Ralph Manheim and R. F. C. Hull, Bollingen Series XCIV (Princeton, N.J.: Princeton University Press, 1974), pp. 196-197.

5. *The Letters of Sigmund Freud and Arnold Zweig*, p. 40.

unaware of these real events while he worked out his theories about unconscious Jewish guilt.

But this willful indifference, and the scornful tone in certain letters, express, in fact, Freud's total psychological separation from the Jewish people by the 1930's. Though he could not deny his origins, Freud yet wrote to Arnold Zweig, as we have just seen, that he considered himself a German, even if Zweig did not. It seems apparent that in Freud there existed the same phenomenon of the rejection of the father which we find in a significant segment of Jewish intellectuals, in both Germany and Austria, at the beginning of the twentieth century.

The anti-Semitism which prevailed in those countries in those years, it should be recalled, was not so virulently racist as in the Hitler era. The myth of the tie between blood and soil was a Nazi invention. Before then, Germanic anti-Semitism was primarily of a religious nature. It sufficed to become Catholic or Protestant, if a Jew of that era in Germany or Austria wished to enjoy full civil rights or to have access to high social position. Gustav Mahler, for example, let himself be baptized in order to become conductor of the Vienna Opera, just as the young Karl Marx, with his baptism, purchased his ticket of admission into polite society. Freud was, of course, too consciously unbelieving to allow himself to be baptized, but his separation from the "corpus judaicum" was every bit as real and as definitive. He never got over the refusal of polite Catholic society in Austria to admit him to its inner circle.

We can perhaps conclude that Freud, victim of his own inferiority complex, did not completely resolve his conflicts by self-analysis, and was ultimately unable quite to accept his own identity as a Jew. He proved unable to overcome his rejection by the world of German culture, whose spiritual son he was, which gave rise to immense feelings of frustration. It was to resolve that dilemma that Freud wrote his book on Moses and monotheism. So far as the discussion of monotheism is concerned, Freud's book actually contained nothing new, for it was a reiteration of the ideas in *Totem and Taboo*. The true source of the book was Freud's long and profound obsession with the figure of Moses, which would not leave his imagination in peace. Ever since that distant trip to Rome, the invasive image of Moses, though repressed in his subconscious for many years, had never ceased to haunt him, until it finally erupted, bursting all bonds of restraint, in the composition of the book. Freud felt compelled to prove that the Jewish religion was a sclerotic and decadent concept. He needed to destroy the Biblical tradition, to wipe the slate clean, in order to permit a new departure for mankind, according to laws handed down from a Freudian Sinai by a new Moses. Had he not written to Jung: ". . . if I am Moses, then you are Joshua . . ."? The remark to Jung must be taken as much more than a jocular figure



of speech, if only because Freudian psychology has persuaded us of the importance of such free associations.

But the new Moses whom Freud envisages could not be Jewish, because Freud sees his own membership in Judaism as responsible for his apparent personal failure. His need is to prove, at any cost, that Moses and all the prophets and intellectuals among the people of Israel were of Egyptian stock, and that Freud himself, (why not?) could have been a descendant of this glorious lineage rather than of the plain Israelites.

The psychoanalytical theory at the base of Freud's Moses conception is well known: a primitive tribal horde is the earliest social structure, and is absolutely dominated by the father figure who is acknowledged to have all the power and to own all the property of the tribe or family. The sons have a natural drive, in such a structure, to try to displace the father, and the penalty for failure is death or exile. Freud was to act out this primitive drama symbolically: he kills the father figure (the monotheistic Moses), pushes aside his brothers (the Jews), isolates himself and takes the father's place, exiling from his presence those who attack his authority. What would he not have given to prove that his "Egyptian Moses" really did exist? Reading an article about an archaeological excavation in Upper Egypt, in which there is mention of a certain prince Thotmes, Freud is enticed out of his habitual scientific reserve. He writes to Arnold Zweig, in a letter of 1935: "If I were a millionaire, I would finance the continuation of those excavations. This Thotmes could be my Moses and I would be able to boast that I had guessed right" (p. 106). Freud's use of the word "guess" here surely throws a singular light on what were shortly to be set down as categorical affirmations.

The history of Moses, as reconstructed by Freud, can be criticized both on historical and on psychological grounds. From the historian's point of view, Freud uses a doubtful technique. He starts with a supposition, which he expands into a theory, which gradually persuades him of its probability, leading him at last to assert it as fact, just as a biologist might start with a prehistoric bone and from it alone try to construct the complete anatomy of the animal. Psychologically, Freud seems on even shakier ground. If Moses was indeed an Egyptian, for example, what explains why an entire nation should have followed, into the perilous desert, and with such blind confidence, a man who was a stranger to their race and their traditions? Another point which seems psychologically questionable is Freud's hypothesis about the death of Moses. Even if one were to accept the notion that Moses was subsequently killed by the Hebrews, it is more probable, surely, that Moses was simply the victim of a *coup d'état* occurring among those closest to him, rather than the victim of the whole Hebrew nation, most of whom would have had



no knowledge of the circumstances of his death. Freud's hypothetical leap, positing a collective guilt complex among the millions of Jews who remained faithful to their religion over a period of thousands of years because their ancestors had killed Moses, the father figure, seems, at the very least, a hazardous conjecture.

Speaking of psychoses, Freud once remarked that in every hallucinatory idea there is a base of forgotten or deformed truth. This enables the sick person to take his hallucination as truth, though the hallucination has expanded well beyond the kernel of truth from which it started, and smothers that truth in its errors. In the matter of Freud's interpretation of the history of Moses, perhaps we might say that the kernel of truth is the existence of Moses, and all the rest is the hallucinatory product of Freud's personal psychosis.

# *The Two Faces of Freud*

ROBERT GORDIS

PERHAPS THE MOST FUNDAMENTAL TRAIT OF THE modern age is a sense of ambiguity, the recognition that almost every human situation reflects more than one attitude or state of mind. This modern sensibility finds expression in such aspects of contemporary culture as the "stream of consciousness school" and "the theater of the absurd," in the work of such disparate figures as James Joyce, Luigi Pirandello, Rose Macaulay, Samuel Beckett, Harold Pinter and Edward Albee.

An overly familiarly apothegm, *wie es sich christelt, so judelt es sich*, would suggest that there is a Jewish counterpart to this modern ambiguity. With the possible exception of those Jews who have remained foursquare within the traditional community—and here, too, their isolation is not complete—all modern Jews have had to wrestle with the problem of adjusting their Jewish origin and background to the general non-Jewish environment in which they function. The responses to this conflict have been as varied as the personalities involved. Often the results have led to great creativity. The tensions have frequently enriched the content of general culture, as in the case of pre-Nazi Germany. They have also broadened the scope of Jewish life and thought, helping to stimulate the rise of all of the various movements and tendencies in modern Judaism,—religious, cultural, political and social.

All too often, however, the effort by modern Jews to resolve the contradictions between "the Jew" and "the world" proved a failure, and the consequences were frustration and despair. To be sure, most of the battles fought and lost were not quite as melodramatic as the suicide of Otto Weininger, who could not live with himself knowing he had been born a Jew. By and large, most modern Jews learned to live with the ambivalence more or less successfully. Nonetheless, the modern world is strewn with instances of Jewish self-hate which are only slightly less pathologic.

One of the most striking instances of this inner contradiction is to be found in the life of Sigmund Freud. There is both irony and justice in the fact that he, who played a seminal role in alerting the modern world to the ambiguities and inner conflicts of the human condition, should himself be a prime instance of the phenomenon. As one of the most influential figures in the modern age, Freud has been the subject of intensive investigation. There is, therefore, considerable interest in establishing his relationship to his Jewish origins and background.

In his paper, "Freud and Judaism: An Analysis in the Light of his Correspondence," Léon Vogel paints a devastating picture of Freud's

negative attitude to Judaism. That Freud was hostile to religion in general and to Judaism in particular is, of course, well known. His works, *Future of an Illusion* and *Moses and Monotheism*, come to mind in this connection. It is no secret, too, that he over-reacted in welcoming C. G. Jung, who was a Swiss Christian, into the psychoanalytic fraternity because Jung seemed to offer a refutation of the charge that psychoanalysis was a Jewish invention.

Nevertheless, Freud's attitude toward Judaism was by no means as consistently negative as has been described. More than once, he indicated that his Jewish background played a significant role in his scientific discoveries. Moreover, his roots in Judaism went beyond the conscious level. When Ernest Jones' *Life of Sigmund Freud* appeared nearly two decades ago, in 1956, I called attention to these unrecognized aspects of Freud's personality. The following material is a version of my comments at that time.\*

It will be generally agreed that the two most influential figures in twentieth century science were Albert Einstein and Sigmund Freud—Einstein, who penetrated the furthest reaches of the universe, and Freud, who explored the innermost recesses of man. The fact that they were both Jews may conceivably be dismissed as a coincidence. But the coincidence—if it is one—becomes even more remarkable when we recall that both Einstein and Freud came out of the ranks of Central-European Jewry, which numbered less than one million souls at its height. It was in the German-speaking culture sphere that the East and the West first met in the consciousness of modern Jews.

Einstein and Freud were the glories of German science, yet both were without honor in their native lands. Einstein had to go to Switzerland for a university post, and Freud never received full professional rank in his own city of Vienna. Both were victims of Nazism and ultimately found refuge in the lands of Anglo-Saxon democracy, Einstein in America, Freud in England. Both were children of the era of assimilation, when the Jewish religion was generally regarded as passé, unworthy of intelligent men. Yet both were not only consciously Jewish in origin, but proud of their background.

Einstein dealt with the objective world of physics. It was perhaps for this reason that he left fewer records of his subjective feelings and attitudes. Yet his Jewish affirmations were as vigorous as his identification with Jewish causes was intense.

Freud, on the contrary, was concerned with the subtleties of the human spirit. His entire life's work may be described as a demonstration of the truth of the words of the prophet Jeremiah: "Man's heart is exceedingly perverse and very weak. Who can understand it?" (17:9).

\* With the kind permission of *The National Jewish Monthly*.

Freud's Jewish attitudes were, therefore, infinitely more complicated and far less forthright than those of Einstein, just as his Jewish activities were much less pervasive. Yet even Freud recognized, not only that he was a Jew, but that he owed a substantial debt to his Jewish origin. In a message which he sent in 1926 to the Vienna Lodge of B'nai B'rith, of which he was a member and where, incidentally, he had received one of his early public hearings, he wrote:

There were other considerations which made the attractiveness of Judaism and Jews irresistible—many obscure forces and emotions, all the more powerful the less they were to be defined in words; and also the clear consciousness of an inner identity in common with yours, of a common construction of the soul. And soon there was added to this the knowledge that only to my Jewish nature did I owe the two qualities which had become indispensable to me on my hard road. Because I was a Jew, I found myself free from the many prejudices which limited others in the use of their intellect, and, being a Jew, I was prepared to enter opposition and to renounce agreement with the "compact majority."

Actually, neither Freud's conscious avowals of Jewishness nor his denials of the value of Judaism exhaust the evidence for the depth of his Jewish roots. In the monumental three-volume life of Freud, his disciple, Ernest Jones, presents a great deal of information regarding Freud's childhood and early years. Jones was, naturally, not interested in evaluating the significance of some of this material upon Freud's relationship to his Jewish background. It is clear, however, that neither the father of psychoanalysis himself, nor his biographer-disciple, ever realized the full extent of the debt which Freud owed to his Jewish background, and the powerful hold which it had upon his spirit.

Freud was born in Freiburg, in Moravia, on May 6, 1856, of East European stock. He himself believed that his family, originally German, as was true of most East-European Jews, had fled to Lithuania, and then had retraced their steps through Galicia and, ultimately, to Austria. He thus combined both the Lithuanian and the Galician backgrounds. When he was four years old, the family moved to Vienna, the gay, sophisticated, and cynical capital of the Austro-Hungarian empire, where gifted and ambitious Jews were creating a brilliant German cultural center, while striving feverishly to divest themselves of any vestige of Jewishness.

Outstanding in his studies, and showing an early aptitude for science, Freud followed the same pattern. In the letter to B'nai B'rith already quoted, he said that "he had no religious belief or Jewish national pride, having been reared without religion." Of a Jewish education in the formal sense he had none, but his parents, liberal-minded in approach, had been reared as Orthodox Jews. Jones, who knew Freud well, said that "he was certainly conversant with all Jewish customs and festivals" (I, p. 19).

On the conscious level, however, it is clear that there were few posi-

tive Jewish values in Freud's life, particularly as he became more and more absorbed in scientific research. All the more significant is the extent of the debt which he owed to Judaism.

Early in his career, he won the support of the Swiss psychologist, C. G. Jung, of Zurich, who was the son of a pastor. Freud drew tremendous encouragement from the fact that at length he had gained recognition outside the circle of his Viennese Jewish friends. But his joy was not of long duration. As the years passed, Jung gave less and less importance to the sexual elements in psychoanalysis, which Freud regarded as fundamental. Ultimately, he broke with Freud altogether on this very question, elaborating a competitive theory of his own. Maebler wrote to Freud's disciple, Ferenczi, that the scientific differences between the Swiss and the Viennese resulted from the fact that the former were "Aryans" and the latter were Jews (II, p. 49). When, at the International Psychoanalytic Congress in 1931, Jones sided with Freud's adherents, Jung said to him: "I thought you were a Christian!" (II, p. 102).

Evidently, Freud regarded the hostility to his theory as motivated mainly, if not solely, by anti-Semitism, the unwillingness of his opponents to pay tribute to a Jew. Curiously enough, Freud never delved further into the sources of this resistance. Had he done so, he might have learnt much of interest. He would have discovered the non-scientific sources of his own approach that made psychoanalysis possible, as well as the deeply rooted reasons for the antagonism that his ideas engendered. Freud, himself, looked upon religion as an illusion. He would have been startled to recognize that his own theory, which he regarded as strictly scientific, owed much to the religious tradition which he scouted and denied.

It is of the essence of Judaism that its conception of man regards all the instincts as natural and God-given and, by that token, as capable of good. For the Jewish religion in its great creative periods of the Bible and the Talmud, the body and soul constitute two inseparable, organically related aspects of an integral human being. Hence, all the physical elements of man's nature, like the need for food and rest, or the sexual drive, are, in and of themselves, neutral. They may be abused, to be sure, but, on the other hand, they may be utilized as avenues for the service of God. Hence, the Midrash declares, "Were it not for the sexual impulse, no man would build a house, or marry a woman, or engage in an occupation" (*Genesis Rabbah*, sec. 89). Nor does Rabbinic Judaism hesitate to interpret the text of the commandment, "Thou shalt love thy God with all thy heart" to mean that God may be served both with the good inclination and with the evil inclination (*Berakhot* 54a), the latter a frequent designation of the sexual impulse. This Hebraic approach to the physical elements of man's nature, including sex as God-given and, therefore, legitimate, differed fundamentally from the

Hellenistic and, later, the Christian dichotomy between body and soul, with the denigration of the sexual impulse. This deep-seated difference lay at the basis of the conflict between Freud and his opponents. Freud was scandalized by the fact that scientists, who publicly attacked him at medical meetings as an obscene purveyor of immorality, would themselves revel in obscene jokes in private. He failed to recognize that this ambivalent attitude was not the result of hypocrisy or even of anti-Semitism, but the deposit of centuries of a religious tradition that found sex both infinitely sinful and infinitely tempting. On the other hand, his Jewish supporters, atheistic though they were in their religion, approached the sexual element in man's nature in a clinical, rather than in a moral mood, as they would any other aspect of man's constitution. They were reflecting, in an oblique manner, the classic Jewish tradition that regards the sexual impulse not as innately evil, but as natural, with proclivities both for good and for ill, and, therefore, to be treated without prejudice.

Recognition of the traditional sources both of Freud's approach and that of his opponents does not, of course, determine the scientific validity of their respective position. Yet we cannot fail to note the tremendous debt that Freud owed to Judaism, the religio-cultural heritage of which he formally knew little, but which he had absorbed in the family environment in which he was reared. In sum, his substantial debt to Judaism, though unacknowledged, is quite distinct from his conscious adherence to Jews with whom he identified himself as a fellow-victim of prejudice and misunderstanding.

We have not yet exhausted the full extent of Freud's self-identification with the Jewish people. Jones points out that Freud had a passionate attachment to the city of Rome, and in 1901 he finally visited it, an act which he called "the high point of my life" (II, p. 10). Throughout his life. Rome continued to exert a tremendous fascination on him; he called it his second home, and even toyed with the idea of settling there after his retirement. At the same time, Jones notes (II, p. 16) that in earlier years there was a mysterious taboo which prevented Freud for years from carrying out his deepest wish to visit the city. After many years of travel in northern and central Italy, he could not get himself to go any further south than Trasimeno, in 1897.

Various explanations of this deep conflict in his spirit with regard to Rome have been offered by students of his life and work. The suggestion was advanced by Puner and others that there was a secret yearning in Freud to join the Roman Catholic Church. Jones vigorously dissects from this opinion. He points out correctly that to twist Freud's resentment at the unjust treatment meted out to Jews, into a resentment at being a Jew, does violence to Freud's wholehearted identification of himself as a Jew throughout his entire life. Instead, Jones sug-

gests that the conflict lay between the two Romes, one the Rome of classical times, which Freud loved and admired, the other Christian Rome, which destroyed and supplanted the older one. This explanation, dealing with realities instead of fantasies, is superior to its predecessors. But I believe that a more pervasive view may be suggested.

In his earliest boyhood, Freud had identified himself with the brilliant Carthaginian general, Hannibal, who almost conquered Rome. Hannibal had crossed from Africa into Europe with his entire army and equipment, had conquered Spain and subjugated Gaul. He then brought his army, including elephants, across the Alps in a magnificent feat, and began the systematic conquest of Italy, getting as far south as Trasimeno. Hannibal, the idol whom the youthful Freud had chosen, was a Semite, of the stock of the Phoenicians, who were neighbors and allies of ancient Israel, and spoke a Semitic dialect almost indistinguishable from Hebrew. Had Hannibal won his struggle, Rome would have been destroyed and Semitic civilization would have become dominant in the Western world. Instead, Rome finally triumphed and Carthage was destroyed. Later, a victorious Rome was able to batter down the walls of Jerusalem, burn the Temple, and drive the Jewish people into exile.

The struggle in Freud's soul was not between pagan Rome and Christian Rome, but between the two aspects of the classical city—Rome, the center of ancient culture which he loved, and the Rome which he hated as the enemy and destroyer of his people. Hence, in his boyhood, Freud identified himself with Rome's greatest enemy, Hannibal, and for many years during his mature life he could not bring himself to get closer to the city, which he both loved and hated, than did his youthful hero, Hannibal. Trasimeno was the limit for the two Semites, Hannibal and Freud.

If, as Freud himself emphasized, the subconscious is far more powerful than the conscious and rational part of our nature, his ties with Judaism and the Jewish people were rooted far more deeply than either he or his biographer recognized.

Freud's Jewish loyalties, moreover, found expression on the conscious level as well. During the First World War, toward the end of 1917, when it became clear that the Central Powers were losing, Freud wrote a despairing letter to his friend, Karl Abraham, indicating that he had lost respect for both sides in that titanic struggle. In a footnote he added, "The only cheerful news is the capture of Jerusalem by the English and the experiment they propose about a home for the Jews." His schedule, which was incredibly crowded by the routine of his medical practice, research and writing, recalls the career of Maimonides. Yet every second Tuesday evening was set aside for attendance at his B'nai B'rith lodge (II, p. 384).



Ernest Jones emphasizes the importance of Freud's Jewish origin. He writes:

One cannot describe the man Freud without laying stress on the fact that he was a Jew. Though never Orthodox or in any way religious, he held together with his people, was a Governor of the Hebrew University in Jerusalem, and took an interest in all that concerned the fate of Jewry. The Nazi intolerance of this spared him no more than it had Einstein. The fact itself is of more than personal interest, since it is doubtful if, without certain traits inherited from his Jewish ancestry, Freud would have been able to accomplish the work he did. I think here of a peculiar native shrewdness, a skeptical attitude towards illusion and deception, and a determined courage that made him impervious to hostile public opinion and the contumely of his professional colleagues (II, p. 427).

The truth was even more closely approached by a Swiss pastor, Oskar Pfister, who was Freud's loyal friend and supporter throughout his lifetime. In October, 1918, Freud wrote to him, half ironically, ". . . By the way, how comes it that none of all the pious people discovered psychoanalysis; why did they have to wait for a quite godless Jew?" Pfister answered the contents of this letter at length, and then came to Freud's last question. "In the first place you are not a Jew, which my endless admiration for Amos, Isaiah, Jeremiah, with the men who composed Job and the prophets, makes me greatly regret; and in the second place you are not so godless, since whoever lives for the truth lives in God and whoever strives for the freeing of love 'dwelleth in God.'"

Had he known it, the pastor might have buttressed his profound insight that Freud's entire life was testimony to a faith in a God he never consciously recognized, by citing an ancient Jewish source. For the Talmud declares, "The seal of the Holy One, blessed be He, is truth."

# *Ethics and Jewish Law*

EUGENE B. KORN

## I

"IS WHAT IS RIGHT RIGHT BECAUSE THE GODS approve of it, or do they approve of it because it is right?"<sup>1</sup>

With this classic question, Plato foreshadowed the modern study of metaethics. He also expressed the theme of a dialectical tension that dominates the life of today's traditional Jew. The uneasiness appears the instant that one accepts Jewish law (*halakhah*) as a guide to how he will act. Specifically, the tension is produced by the independence of two logical systems: the rules of correct moral reasoning and the logic determining religious imperatives. This independence insures that when a Jew commits himself to religious obedience, he lays himself open to the possibility of acting immorally.<sup>2</sup>

Morality is a system of rules designed to harmonize human interaction. It consists of values and principles which determine how people ought to act toward one another while pursuing both common and conflicting goals. Moral principles are not mere descriptions of how people do act, since actual behavior often falls short of ethical standards. They are ideals against which real action is measured. Metaethics inquires into the nature of the three moral ideals: goodness, rightness, and justice. It tries to ascertain what these concepts mean and how to use them properly, asking "What is the essence of 'the good,' 'the right,' 'the just?'" Plato's question is metaethical because it asks what constitutes moral rightness, not merely which acts possess the characteristic of being right.

Jewish law has traditionally been considered as emanating from God, either directly or indirectly. Its very authority and obligatory nature derive from its purported divine character.<sup>3</sup> To someone trying to understand the prescriptive nature of halakhic imperatives, the platonic question arises: Are the *mitzvot* of Jewish law right because

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1. *Euthyphro*, 10a. Although Socrates speaks here of "holiness," it is apparent from the ensuing discussion that he is using that word to approximate the contemporary usage of the word "right."

2. It must be understood that I am not referring to current or popular opinion about what is judged moral or immoral. I am talking, rather, about judgments either consistent with, or violating, the conceptual requirements of prescriptive language.

3. It is not my purpose to justify the claim of the divinity of the *halakhah*, but only to analyze the logical implications of accepting it as a premise.

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God commands them or does God command them because they are right?

If halakhic action is right by virtue of its divine source and irrespective of its content, the concept of moral rightness is defined as that which God commands. Consequently, to state that "Some act, A, is morally right," is to say nothing more than "God commands A." By extension, the concepts of goodness and justice can be similarly reduced to theological categories: "Goodness" can be defined as those conditions which inhere in, or emanate from, God; "justice" can be understood as the meticulous application of divine law, either revelational or natural. All moral language would be, in principle, translatable into theological language by simple substitutions, since the moral linguistic domain would have no meaning independent of theological concepts. The statement, "Divine law is morally right," would be analytic and tell us nothing about the nature of divine law, just as the statement, "All married men are not bachelors," tells us nothing that we already do not know from the concept "married man." "Divine law is morally right," becomes a barren tautology whose negation is self-contradictory and, therefore, impossible.

If the converse relation holds and God commands actions because they are morally right, then the concept of moral rightness is logically prior to theological law. The notions of rightness, goodness, and justice are logically independent of theology and are determined without any reference to divine imperatives. To say that an act, A, is right or that a state of affairs, S, is good, is not to say anything about God, even implicitly. Divine law may, indeed, prescribe act A or value S, but, if so, it is because such laws lead to the realization of independent moral concepts and satisfy the rules governing the proper use of moral language. "Divine law is morally right," becomes a synthetic statement, expanding our knowledge of the nature of religious law. It tells us something that we could not know by merely contemplating that concept, just as "All married men are at least thirteen years old," tells us something about married men that we could not derive from mere analysis. As a synthetic statement, "Divine law is morally right," is contingently true. It is at least logically possible for it to be false in some instance, even though it may be the case that it never actually is false.

If the concepts of morality and the logic of its discourse are independent of theological ideas, there are independent criteria to which any ethical doctrine, judgment, or legal code may be subjected. That is, the legal "ought" in "Thou shalt obey divine law," must be evaluated in light of the concepts and properties of moral language to determine whether it is consistent with the "ought" of ethical obligation.

What, then, is the answer to the platonic question? Modern philosophy has demonstrated unequivocally that the second position

is the correct one: moral concepts are logically independent of theological ideas. Given the way we understand the idea of moral rightness, it is not an absurdity to claim, "God commands A, yet it is not right to do A." Such a compound statement may, in fact, always be false, but the claim is at least internally coherent. Hence, it is not impossible for it to be true, as would be the case if actions were morally right because God commands them. Moral concepts are defined without ever invoking theology. The meaning of "good" is analytically related to human welfare, fulfillment and virtue; the meaning of "right" is tied to the equal protection of individual interests, and its proper use is governed by the law of universalizability (If an act is right for one person, it is right for all similarly situated persons); the meaning of distributive justice is essentially that of fairness achieved by the elimination of arbitrary inequalities, while the meaning of retributive justice is essentially that of the proportionate return of reward for right action and punishment for wrong action.<sup>4</sup>

What makes these conclusions so important for the traditional Jew is that they are not derived from original premises such as "There is no God," or "Man is not free," which are contrary to the central principles of Judaism. If they were so dependent, one could easily dissolve their logical force by disavowing these axioms in favor of the equally acceptable tenets of Judaism. But the conclusions of meta-ethics are the fruits of linguistic analysis. They are inferred from the character of every day discourse and its presuppositions, and do not follow from the acceptance of any substantive premises. The nature of moral language alone determines moral concepts to be independent of theological ones and correct moral reasoning to be different from strict legal inference. This explains why the autonomy of moral judgment is a conclusion found not only in philosophy, but is also confirmed in the more empirical disciplines of developmental and educational psychology.<sup>5</sup>

To elude the force of these results, one would have to create a private language and have his concepts retreat into its solitary cocoon. One could never agree, or even disagree, with others on moral issues, for the meaning of his moral terms and the ones spoken by others would be totally disparate. If one were to claim, "Honesty is right," and another person were to claim, "Honesty is right," the identical language used would be only an accident that sometimes occurs when the same symbol is adopted to stand for different ideas. The word

4. See David Ross, *The Right and the Good*, (Oxford: Clarendon Press, 1967), Ch. V; R. M. Hare, *Freedom and Reason*, (N.Y.: Oxford University Press, 1965), Chs. II and III; John Rawls, "Justice as Fairness," *Philosophical Review*, 1958 and "Two Concepts of Rules," *Philosophical Review*, 1955.

5. See Lawrence Kohlberg, "Stages of Moral Development as a Basis for Moral Education," in *Moral Education, Interdisciplinary Approaches*, edited by C. M. Beck, B. S. Crittenden, and E. V. Sullivan (N.Y.: Newman Press, 1971), pp. 23-92.

“right” in the first statement and the word “right” in the second statement would be no more than homonyms, just as are the “right” indicating the opposite of “left” and the “right” indicating the opposite of “wrong.”

A consistent argument along these extremes lines does exist, and, because of its relative popularity, it should be analyzed. Someone who dogmatically clings to the identity of morality and Jewish law can argue that we Jews now live in *galut* (diaspora), a dispersion that separates us not only from our geographical homeland but, also, from the true Jewish cultural, intellectual and moral clime. Because our lives are so immersed in the spiritual *galut* we all imbibe non-Jewish attitudes, judgments, and models to the extent that we have become, willy-nilly, acculturated Jews. It is only this acculturation which tells us that a violation of the commandment not to murder and a violation of the commandment to don phylacteries are different in kind as well as in degree. If we could be raised in an environment where authentic Judaism would have exclusive domination over thinking processes, we would no longer experience the tension caused by our independent conceptions of morality and Jewish law.. We would then realize that any violation of halakhah—even halakhah dealing with so-called rituals like phylacteries—is *ipso facto* a violation of morality. Imagining that the demands of morality conflict with the imperatives of Jewish law is as logically confused as looking for a bachelor who is a married man. Our consciousnesses would tell us that moral goodness, rightness, and justice are defined by reference to Jewish law and nothing more. Hence, to admit of the experience of the dialectical tension is to betray ideal Judaism.

If we observe that all the linguistic analyses of metaethical studies were performed on non-Jewish linguistic models, this argument gains some plausibility. After all, the implicit assumption of metaethics is that all moral discourse is governed by the same set of linguistic rules. Could it be that the Jew is so metaphysically “other” that even his linguistic rules are *sui generis*? If so, the conclusions of metaethical philosophy are valid for the non-Jew, but make no necessary claim upon the Jew. It is this possibility which makes the dogmatist’s position worthy of serious consideration.

Even if we assume that this argument is conceptually consistent, it is unsound, since its conclusion is factually incorrect. This can be demonstrated by analyzing Jewish literary sources and specifying their pivotal concepts. Restricting the examination to Bible and Talmud, I am specifically excluding Jewish philosophy, since nearly all Jewish philosophy has drawn on non-Jewish sources for some of its ideas.<sup>6</sup>

6. Whereas Platonic and Aristotelian philosophical concepts were essential to the emergence of the medieval Jewish philosophies of Saadia, Philo, and Maimonides,

1. Genesis 1:31: "God saw everything that He had made, and behold, it was very good; and there was evening and there was morning the sixth day." I assume that the word "good" refers to moral goodness. What does this verse say? Traditional commentaries construe it to indicate that God recognized some prescriptive characteristic to be present in the world. It is a statement about the universe's constitution: The universe manifests moral character, it is a potential arena for human happiness and welfare and its dynamics are conducive to human fulfillment.<sup>7</sup>

What meaning could this verse have if "good" were defined theologically as that which inheres in, or emanates from, God? By simple substitution, the verse would read, "God saw everything that He had made, and behold, it emanated from Him . . ." This interpretation is non-informative, since we already know that God is the efficient cause of the universe from the words "that He had made." Obviously, the use of the word "good" with a theological definition renders the clause "it was very good," superfluous and this is contrary to the rabbinic principle that every word in the Torah is necessary. Hence, "good" must be defined as an independent quality.

2. The central problem of the book of Job is divine justice. Job is ever-cognizant that God is the ultimate source of his personal tragedies. He knows that the human acts and the forces of nature which are the immediate causes of his suffering are only instruments of a divine cosmic plan. Hence, he never doubts that his plight results from the application of the divine word upon human experience. For this, God bears full responsibility.

The story of Job is not merely an account of personal tragedy. Out of his suffering evolves a problem, both existential and logical, because Job has a clear and distinct idea of justice. This idea conflicts with the real application of the divine *logos* as Job experiences it. Only if the standards of justice are defined as independent of divine law can Job ponder the inconsistency between those standards and the way in which God is ruling the universe. Were the concept of justice defined as the exact application of divine law, the significance of Job's problem, indeed, the problem itself, would vanish into nothingness. Under this hypothesis the only appropriate response for Job would be the fatalistic, "It is God's will." The suffering of the righteous would cause no more of a religious and moral problem than does the suffering of the wicked. If the book of Job has any wisdom for us at all, it is because it presupposes a non-theological conception of justice.

the modern philosophies of Cohen, Buber, and Rosenzweig can be properly understood as Jewish responses to the ideas of Kant, Hegel, and Kierkegaard.

7. See, particularly, the commentary of the *Kli Yakar*, who emphasizes this notion through a teleological concept of moral goodness. See, also, the Babylonian Talmud, *Hagigah* 12a, for a different, but still non-theological interpretation.

3. Said Rabbi Yohanan, "Jerusalem was destroyed only because they judged according to the laws of the Torah."

"Should they then have judged according to the laws of tyrants?"

"(No,) but state it (properly): (Jerusalem was destroyed only because) they based their judgments (exclusively) upon the law of the Torah and they did not go beyond the requirements of the law."

(Babylonian Talmud, *Baba Mezia* 30b)

Within Jewish tradition the destruction of Jerusalem has always been considered a punishment. Justified punishment implies wrongdoing, and according to Rabbi Yohanan it is the fact that the Jewish people acted only in accordance with the strict letter of the law that constituted this moral failing. Yet this opinion is incoherent if moral rightness is defined as that which God commands, for Rabbi Yohanan is contending that, in the face of complete legal obedience, the standards of moral rightness were not satisfied. One must go beyond the explicit imperatives of halakhah to realize moral perfection. Nor can it be consistently maintained that the concept of "going beyond the law" is itself legal, for this contention is a paradox leading to a logical absurdity. Hence, moral rightness is not only independent of the legal concept, but man is held responsible for moral standards not fulfilled by impeccable legal obedience.<sup>8</sup> Of course, others disagree over which specific sin brought about the destruction of Jerusalem,<sup>9</sup> but the fact that Rabbi Yohanan's opinion was not regarded as unintelligible nonsense by his colleagues indicates that they shared his conceptual presuppositions about moral judgment.

4. Lastly, consider another Talmudic passage that is directly legal. According to the explicit law of the Torah (Deuteronomy 21:18-22), a son who is determined to be stubborn and rebellious against his parents incurs the punishment of death through stoning. However, since his parents must proclaim before a rabbinic court that such a son is also a glutton and a drunkard (*ad loc.* verse 20), the law provides that no son, no matter how stubborn and antisocial he may be, can fall under the category of a stubborn and rebellious son until he has eaten a specified quantity of stolen meat and has drunk a certain quantity of wine. Hence, such forbidden eating and drinking can mean the difference between capital punishment or not. Referring to this last point, Rabbi Shimon offers his legal opinion:

Said Rabbi Shimon, "Because one eats a half *manna* of meat and drinks a half *log* of wine can his parents take him and have him stoned?"

(Obviously not!) Therefore, (a stubborn and rebellious son) never existed and never will exist.

8. For an elaboration of the idea that moral standards extend beyond the strict imperative of the law, see the commentary of Nahmanides on Leviticus 15:2. For a contemporary explanation of this thesis, see Walter Wurzbarger's "Covenantal Imperatives," in *Samuel K. Mirsky Memorial Volume* (N.Y.: Yeshiva U. Press, 1970), pp. 3-12.

9. Compare Babylonian Talmud, *Yoma* 9b.



Why, then, is the law written? That you may study it and receive reward.<sup>10</sup>

Rabbi Shimon has rendered an explicit halakhah of the Torah to be inoperative because it violates his sense of justice. Notice that he does not quote another Biblical law that conflicts with the institution of the stubborn and rebellious son and then claim that, to preserve the consistency of the entire halakhic system, the particular law of the stubborn and rebellious son must be renounced. Nor is his conclusion inferred from any interpretation of the law that was handed down to him by a legal tradition. To be exact, the conclusion does not derive from any legal argument at all, but from a purely moral one: The idea of retributive justice requires that the punishment for a crime be proportionate to the severity of the crime. No act of eating or drinking could ever be a severe enough transgression to merit the extreme punishment of stoning. Hence, justice requires that the law of the stubborn and rebellious son never be applied. His conclusion that such a son never has existed and never will exist is not an empirical claim determined by fact. It is a necessary truth determined *a priori* by the legal requirements of the concept of justice: There can never be a stubborn and rebellious son to whom these laws justly apply.

These few instances of linguistic analysis prove conclusively that there are moral concepts which Judaism admits are logically independent of, and cannot be reduced to, legal imperatives. Additional cases can be produced almost at will, so that this conceptual framework can be consistently extracted from nearly every element of Jewish thought.<sup>11</sup> The two acts of neglecting to don phylacteries and committing murder—even though they are both halakhic transgressions—differ in kind as well as in degree. The first is strictly legal, while the second possesses moral dimension. Consequently, they warrant different logical, psychological, and correctional responses from us.

## II

The Jew committed to halakhah can share with others the same moral concepts. When he speaks of goodness, he means essentially human happiness and fulfillment. He talks of moral rightness, referring to the fair protection of individual interests, and he utilizes the word

10. Babylonian Talmud, *Sanhedrin* 71a. It should be noted that even the opinion of Rabbi Yosc, appearing on 72a, while disagreeing with the judgment of Rabbi Shimon, implies some independent concept of retributive justice whose requirements would exclude capital punishment for acts of rebelliousness and gluttony alone, even though this is the explicit condition of the verse.

11. Another obvious case is the action of Saul towards the Amalekites and their king, Agag (I Samuel 15:1-9). The midrashic commentary clearly assumes the validity of a certain type of utilitarian moral reasoning. See also, *Yoma* 67b.

"justice" to connote reciprocity and the elimination of arbitrary inequalities. As a result of these conceptualizations, his ethical reasoning is governed by certain principles of inference. He need not retreat into a private moral language, for the logic of moral reasoning is identical for both the Jew and the non-Jew. It is a universal king whose sovereignty over clear thinking knows no ethnic or cultural boundaries.

At this point the dialectical tension becomes evident. The respective conclusions of morality and halakhah need not be consistent with each other since they are derived from different logical systems. The practical conflict occurs because the two logics produce conclusions that cover the same domain of human interaction. Put in another way, believing that God commands certain acts is neither a sufficient nor a necessary moral justification for doing those acts. To be exact, it is not a logically adequate reason in any rational argumentation.<sup>12</sup> In effect, the halakhic Jew must submit simultaneously to two authorities when deciding what to do. He cannot pass between the horns of the dilemma by "rendering unto Caesar what is Caesar's and rendering unto God what is God's," since both authorities claim to have ultimate sway over correct human action.<sup>13</sup>

The dilemma is insoluble and, therefore, eternal. He who reserves ultimate allegiance to halakhah and relegates moral prescriptions to secondary importance abdicates his moral responsibility by committing himself to the possibility of doing what he ought not to do. He who subordinates the halakhah to the authority of independent moral reasoning subjects *mitzvot* to moral evaluation and thereby severs

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12. This is an exceedingly important point. Objectivity and universality are inherent properties of all logically adequate reasons, so that what counts as a reason for me necessarily counts as a reason for others. Conversely, if I could not regard a reason as constituting a justification for someone else's action, it could not count as a justifying reason for my action either. In so far as there is no way to verify or falsify the claim of "God commanded me to do act A," there is no way rationally to distinguish between one who actually receives divine revelation and the sincere person who suffers from religious hallucinations. Hence, because we are not prepared to acknowledge anyone's preposterous claims of divine revelation occurring in a dream or a seance as a justification for the heinous acts of murder, rape, or political expulsion (Idi Amin recently tried to justify his expulsion of British Asians from Uganda by saying that God appeared to him in a dream and advised him so to act), the logic of reason forbids us to offer the divinity of halakhic imperatives as ultimate justification for acts which do not offend our moral sensibilities, even though we may sincerely believe in that divine origin.

13. The problem of the relationship of law to morality is a general one, applying to every legal system. It is particularly vexing, however, with respect to law alleged to be divine, since this law is considered to be of the highest possible legal order. One cannot justify breaking a divine law, as one can do for positive man-made law, by claiming that it conflicts with a higher system that one has a greater obligation to uphold. Thus, there is no way legally to extricate oneself from the grip of a religious obligation which is suspected of being immoral.

himself from the historic community of Israel who first proclaimed, "We will do," and only afterwards stated, "We will understand."<sup>14</sup> The theoretical paradox takes its existential toll. In every particular situation where divine commands prescribe action affecting human interests, one can obey only with fear and trembling, hoping that he is not simultaneously trespassing upon a moral prohibition.

This psychological crisis was the primary source of tension for Abraham when he was commanded to sacrifice Isaac. Abraham's problem was not merely that Isaac was precious to him, that Isaac was the only instrument by which his historical destiny could be fulfilled. The Bible is replete with lesser figures who were summoned by God to sacrifice their most valued possessions. Abraham's sacrifice was categorically different because he was commanded to destroy a human being—and while the destruction of one's possessions is emotionally frustrating, the wanton destruction of a human being is grossly immoral. Abraham's dilemma was produced by the contradictory imperatives of religion and morality, not by a conflict of piety and desire. Like the ram which he found on the mountain top, Abraham was trapped in a thicket of absurdity: having to do what was religiously right but was morally wrong. The antinomy which became a tormenting actuality for Abraham remains an ever-present possibility for the obedient Jew of today.

Though the formal requirements of the halakhah do not demand that we offer up the life of another as a religious sacrifice, Jewish law does legislate certain imperatives that seem to conflict with essential moral concepts. For instance, it is not at all obvious that the legal inability of a Jewish wife to initiate divorce proceedings is consistent with the production of happiness and human fulfillment. Also, the halakhic institution of *mamzerut*, denying the child of an adulterous or incestuous union the right to marry any Jew who is not a convert or is not similarly illegitimate, seems to be unjust. It conflicts with the principles of retributive and distributive justice, namely, "Only the proven guilty ought to be punished," and "Arbitrary inequalities ought to be eliminated."<sup>15</sup> Can we not ask, as did Rabbi Shimon, "Is it just to demand that someone suffer because his parents have sinned?" Can these in-

14. According to the Biblical narrative (Exodus 19:8), the community of Israel obligated itself to obey God's laws even before it knew what the content of those laws was. It is only later (Exodus 24:3-8), after the initial commitment was given, that Moses explained to the nation the details of the laws, at which point Israel pledged itself to their understanding. The idea that one must obey God's law, whatever it may be and whether or not its rationale is known, is a dominant theme in the proper acceptance of the halakhah.

15. Rawls, *Op. cit.* Any inequality that does not work out for the advantage of every party is deemed arbitrary.

stitutional inequalities be made consistent with the universalizable concept of moral rightness?

I reiterate that I am not claiming that these halakhot are definitely in conflict with the concepts of goodness, rightness, and justice, but only that there is a *prima facie* inconsistency which must be acknowledged. It may be that a detailed analysis could demonstrate consistency, but, if so, such a justification must be articulated. One cannot claim moral justification by citing a Biblical verse or halakhic exegesis. Such legal evidence has no direct implications for establishing moral judgment. Moreover, the burden of proof is on the person who claims them to be good and just, since it is the departure from equality and the denial of happiness that stands in need of justification, rather than the maintenance of equality and the production of happiness.<sup>16</sup> It is interesting to note that one who argues that there is no reason or justification for the specific content of such laws, other than that God decreed them, commits himself to the necessary arbitrariness of these inequalities and, thereby, concedes their injustice.

Although the dilemma is time-honored, it grips modern Jews with particular tenacity. Our pervasive exposure to moral argumentation in non-Jewish contexts and our lack of instinctive comfort with the norms of halakhah make us unique in Jewish history. The enlightenment has forced us out of the intellectual and axiological ghetto to which even the most fervent isolationist cannot return. For many Jews, the extra-halakhic frame of reference has grown to be so dominant that we feel the attraction of ideal moral concepts more immediately than we do the demands of divine law. Our position is unlike that of Abraham, for in his case the imbalance of conflicting forces and his psychological disposition was the reverse of ours. He perceived God and His command directly, with immediate impact. Such intimacy between God and man is largely closed to us moderns and, thus, Abraham's choice is a difficult model for us to accept.

There is another reason why Abraham's response is unacceptable today. We now live in the post-holocaust era, on the heels of the time when brutal immorality reached its apex in human affairs. History has taught us that evil is no mere philosophical abstraction but an existential horror. In the light of this reminder, the cardinal sin of our time would be any suspension of the ethical, any iron-clad commitment to a principle that could possibly violate moral law. Today there is no possible justification for subordinating morality to any absolute—whether philosophical, political or religious. In the twentieth century, the agonizing cries of Auschwitz pierce our ears more loudly than does the thunder of Sinai.

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16. Ibid.

While being caught on the horns of the dilemma is a logical necessity, it is important that its practical effects be limited. Above all, the cognitive disharmony engendered by the two logical systems must not paralyze the Jew in the realm of action. Here the only preventative cure is an initial faith gesture. Faith, not in the truth of a metaphysical proposition about entities in the abstract heavens or about miraculous events occurring in the distant past, but a posture of faith rooted in the here and now: belief that the possibility of a halakhic imperative conflicting with a moral obligation never becomes an actuality. The Jew must function under the initial assumption that the Torah lifestyle approaches moral perfection and that the halakhah never dictates action that is morally wrong. Again, were these assumptions logically necessary, deniable only on pain of inconsistency, the initial faith gesture would be destroyed rather than enhanced.

The act of faith is, ideally, the beginning of a program of confirmation, not a finale heralding solution. The Jew must strive to transform his faith into knowledge, if he is to become religiously mature and morally sensitive. He must emulate Descartes to the extent that he must never rest until he adduces evidence, deemed sufficient by the logic of moral judgment, to warrant every claim that the specific *mizvah* which he must now obey conforms to the realization of goodness, rightness, and justice.

This program of rational reconstruction must be carried out on two levels. A formal and comprehensive demonstration is the joint enterprise of the philosopher and competent halakhist. In an age when metaphysical speculation holds little value, the primary business of contemporary Jewish philosophy should be the elucidation of the practical wisdom of Jewish law and how its standards lead to the realization of the ideal moral and social life. Because Judaism is primarily a system of normative action and not a doctrine of theoretical truths, a philosophy of Judaism should concern itself more with discovering the moral reasons for specific acts rather than finding the logical warrant for asserting speculative propositions. Hence, rational moral philosophy is more central to authentic Jewish philosophy than is speculative metaphysics. This conception of Jewish philosophy is not new. It was explored by Saadia Gaon in the tenth century, when he sought to specify the rationale for Biblical law by showing it to follow logically from certain fundamental principles of practical reason.<sup>17</sup> In the light of the recent analyses of moral concepts, principles, and logic by philosophers such as Kant, Singer, Hare and Rawls, a more comprehensive rational reconstruction of Jewish law must be developed.

Yet there must be a second, more private level of demonstration.

17. *Book of Beliefs and Opinions*, translated by S. Rosenblatt (New Haven, 1948), III,2.

Everyone is responsible for his actions, even the person for whom formal philosophy and Jewish law are unrecognized terrain. Therefore, every individual Jew must write a "Book of Beliefs and Opinions" for himself if he is to obey religious law with clear conscience and firm conviction. In every situation where the halakhah summons the Jew to action or inaction, he must be able honestly to convince his heart and mind that he is not being called upon to do something wrong. He must strive to understand how religious law promotes human happiness and fulfillment as he comes to recognize them through the prism of his own subjective experience. Because this existential awareness may be untranslatable into objective description, the understanding may be non-demonstrable on a public level. Nevertheless, this justification of religious law must be the result of personal experience and not a necessary truth to be dogmatically imposed upon experience by initial linguistic definitions. The realization of these justifying experiences is an ideal toward which one may continually measure a dimension of his religious growth and insight.

But is it only wishful thinking to suspect that a logical demonstration will lead to a confirmation of the moral superiority of Jewish law, rather than its disconfirmation? While I am primarily concerned with establishing the legitimacy of asking the religious-moral question, I would like to cite some general preliminary evidence that has significance for its answer.

The Talmud tells us (*Shabbat* 31a) that when Hillel was asked to explain the principles of the Torah he stated, "What is hateful unto you, do not do unto your neighbor. This is the entire Torah; the rest is commentary. Now go and study." Hillel here claims that all the specific laws of the Torah are instantiations of this supreme principle. Hence, all elements of the halakhah could be derived from (although, in fact, they are not) the following principle of reasoning: "If you would not be willing to allow anyone to do act A to you in certain circumstances, then you ought not to do act A to him in those circumstances." This principle of inference is the very one which modern philosophy has used as a cornerstone of correct moral reasoning. Countenancing such hypothetical counter-identity situations is the most important element in the application of Kant's Categorical Imperative, as well as in the test for the universalizability of legitimate moral judgments.<sup>18</sup>

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18. See R. M. Hare, *Op. cit.*, Chapters VI and IX. The unwillingness to allow someone else to do an act because it would adversely affect one's own interests is the most common way of demonstrating that he does not will the maxim of that act to be a universal law. This is the implicit reasoning behind Kant's famous third example in the *Grundlegung*. It is also why Hare's doctrine of universal prescriptivism can be properly understood as a development of Kant's Categorical Imperative.

I am also convinced that a close variant of this principle is the key to establishing the conceptual framework of justice.<sup>19</sup> If Hillel's statement is literally true, the claims derived from the universal character of "right" and the conceptual requirements of justice must be identical with the laws of the Torah. Hillel's reduction of the halakhah would insure that the respective conclusions of moral logic and the method of halakhic reasoning are coextensive. But we cannot be satisfied with Hillel's broad generalization. We must follow his advice and meticulously examine the particular laws, demonstrating their relationship to moral ideals.

In relation to the halakhah's ability to realize moral goodness in the form of human happiness and fulfillment, there is much evidence to suggest that when the particular circumstances arise in which a literal or conventional application of Biblical or Rabbinic law would lead to unjustifiable hardship and frustration, the Rabbis have the power to interpret old laws and to enact new ones that would alleviate useless misery and promote the "general good."<sup>20</sup> So important was the maintenance of happiness that the Rabbis were known to take drastic legal measures, sometimes abrogating a Biblical law or ignoring legal precedent, to avoid its diminution.<sup>21</sup> And as Rabbi Shimon's understanding of the law should teach us, such interpretations neither undermine nor circumvent the halakhah, but bring it to its full realization. Far from being an immutable Draconian doctrine, the halakhah is, and always should be, a malleable tool to be used judiciously for the promotion of the moral good. One can maintain in principle that when operative religious law is correctly applied, it never sacrifices moral goodness upon the altar of pedantic legalism. Again, these general considerations do not prove conclusively that religious imperatives never conflict with moral ideals. Definitive arguments can be established only by systematically analyzing each halakhah, its normative interpretation, and the part which it plays in the calculus of actual legal decision.

Of course, there are grave risks in acknowledging the fact that moral reasoning exists independent of legal prescription and then

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19. Rawls generates his theorems of justice from a hypothetical "bargaining" situation. It can be demonstrated that the conditions of this background situation are precisely those that would be produced by a correct and universal application of the above principle and certain trivial assumptions.

20. See the ordinance of Gamliel the Elder recorded in *Mishnah Gittin* 4:2.

21. Yitzchak D. Gilat cogently documents how socio-political factors and general considerations of human happiness often lead the Rabbis to interpret, limit, and apply conventional halakhot in new ways, "The Halakhah and Its Relationship to Social Reality," in *Tradition*, Volume 13, No. 4 and Volume 14, No. 1, Spring-Summer, 1973, pp. 68-87. See, also, the final commentary of the *Maharshah* on tractate *Yevamot* concerning why the tractate closes with the statement, "Scholars increase peace in the world," for the proper halakhic approach to producing happiness.



embarking on a program to demonstrate that Jewish law conduces to moral ideals. In the attempt to adduce evidence for the belief that *halakhic* imperatives do not conflict with the good, the right, and the just, one tacitly admits to the possibility of finding conclusive evidence to the contrary. Rationality is a dangerous double-edged sword; in addition to strengthening belief through logical confirmation, it can also undermine it through falsification.

The possibility of falsification and the dialectical tension it generates is the price which the religious Jew must pay for giving meaning to his belief that God is good. It is also the toll exacted for believing that he owes thankfulness to God for helping him find his way through a world of moral darkness and illusion. Without this possibility of falsification, God would be only an omnipotent Being who arbitrarily imposes demands upon us that are maliciously produced by divine whim. That is, believing that God gave us laws because they are morally right is a necessary condition for one to elevate his religious experience from the fear of God to the love of Him.

# Hegel and Judaism

LAWRENCE S. STEPELEVICH

PERHAPS OUT OF A RESURGENCE OF AN INTEREST in the "young" or philosophic Marx, within the past decade, or for reasons less obvious, Hegel's philosophy is attracting more scholarly interest at present than at any time since his death in 1831. We are now said to be in a "Hegel-renaissance,"<sup>1</sup> complete with books, articles, institutes, and societies all bent upon explicating Hegelianism. Certainly, the gradual appearance of a completely new and definitive edition of Hegel's works signals the extent of this renaissance.<sup>2</sup>

The ramifications of this renewed and vigorous Hegelian growth have yet to be fully determined, but these consequences should not remain a matter of indifference, particularly in those areas touching directly upon our society. Now, a simple litmus test to determine the social desirability of Hegelianism would be the examination of its attitude in regard to Judaism, for there is nothing more refractory to philosophic sublimation than anti-Semitism. If Hegel's philosophic system is either incapable of rising above the cultural psychosis of anti-Semitism, or, worse yet, incorporates it within the system, then the revival of Hegelianism must be, for men of good will, a most unhappy event. And so, the question is here asked, "What is Hegel's evaluation of Judaism?" The following pages are directed to an answer.

There is, however, a further matter that goes beyond the mere determination of Hegel's views. This is the case of those Jewish thinkers attracted to Hegel and yet naturally aware of his attitude toward Judaism. Their attempts to seize upon a certain straw of toleration found in the wind of Hegel's system, and to use it as a bridge between this system and Judaism, might be seen as either a brilliant reconciliatory solution or an act of pathetic self-deception. In any case, their attempt should be judged only at the conclusion of a general examination of Hegel's thoughts upon the subject of Judaism.

According to Hegel, no philosophy can transcend the age in which it matures, or, as he states the principle, "as every individual is a child of his time; so philosophy too is its own time apprehended in

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1. John N. Findlay, "The Contemporary Relevance of Hegel," *Hegel: A Collection of Critical Essays*, ed. Alasdair MacIntyre (Garden City, 1972), p. 2.

2. On the details of this new edition, as well as other activities pointing to renewed interest in Hegel, see *The Owl of Minerva*, Quarterly publication of the Hegel Society of America, 4, No. 4.

thoughts.”<sup>3</sup> This being so, it should not be surprising that Hegelianism consciously reflected the temper and prejudices of its age, but it still remained true to itself as a philosophy in that it elevated these earthy attitudes into the spiritual world of thought. Philosophy, in short, would consciously rationalize the given. Now, no social “given” was more in evidence during the Hegelian age than that attitude or hostility, held by learned and unlearned Germans alike, toward Jews and Judaism. However, educated Germany, recently tutored in the *Aufklärung* toleration of Lessing and the Napoleonic Code, and the mere fact of Moses Mendelssohn, was faced with the problem of giving plausible reasons for the continuation of that hostility.

Among the various rationales that were proffered to justify the classification of Judaism as an inferior religious form, none was more ingenious or more influential than that presented by Hegel. Indeed, Hegel's mind in the matter of Judaism is reflected—more crudely—in the thoughts of his later students, Karl Marx, Ludwig Feuerbach, and Bruno Bauer. Their attempts to rationalize anti-Semitism almost succeeds in concealing its irrational source. Marx's article “On the Jewish Question,”<sup>4</sup> Feuerbach's infamous sixth chapter in his influential work, *The Essence of Christianity*,<sup>5</sup> and Bauer's callous study, “The Jewish Problem,”<sup>6</sup> are but the brutalized expressions of what is first to be found in Hegel.

Jews and Judaism—terms which Hegel uses interchangeably, despite their separation by Enlightenment thinkers—were subjects of interest to him throughout his career, making their first and major appearance in his earliest writings.<sup>7</sup> These essays, left unpublished until 1907, are generally directed to theological topics and, thus, reflect Hegel's studies at that famous theological institute, the Tübinger Stift. Concerning these more or less fragmentary essays, Walter Kaufmann has noted that they “are not anti-religious but consistently depreciate theology in any customary sense of that word.”<sup>8</sup> It can be added that theology, however depreciated by Hegel in these writings, seems to have been left untouched, by comparison with his depreciation of Judaism.

In the course of these writings, Hegel's attitude toward Christian-

3. Friedrich Hegel, *The Philosophy of Right*, trans. and ed. by T. M. Knox (New York, 1967), p. 11.

4. *Writings of the Young Marx*, trans. and ed., Loyd D. Easton and Kurt H. Guddat (New York, 1967), pp. 216–248.

5. Ludwig Feuerbach, *The Essence of Christianity*, trans. George Eliot (New York, 1957).

6. Bruno Bauer, *The Jewish Problem*, trans. Helen Lederer (Cincinnati, 1958).

7. Friedrich Hegel, *On Christianity: Early Theological Writings*, trans. by T. M. Knox (Gloucester, 1970).

8. W. Kaufmann, “The Young Hegel and Religion,” *Hegel: A Collection of Critical Essays*, ed. Alasdair MacIntyre, p. 63.

ity underwent a fundamental change, growing ever more favorable. The same thing cannot be said of his attitude regarding Judaism; that remained consistently negative.

It is evident that the fundamental philosophical source of Hegel's attitude toward Judaism in these early essays is to be found in his commitment to Kantianism, to the notion that moral autonomy is the greatest virtue, and that moral self-legislation and freedom are inseparable. Thus, Jesus "undertook to raise religion and virtue to morality, and to restore to morality the freedom which was its essence," but the Jews, "overwhelmed by a burden of statutory commands," and having "nothing save pride in this slavish obedience to laws not laid down by themselves," were unable to respond to these Kantian calls for moral independence. Even the disciples of Jesus were too Jewish to become Christian, locked as they were within their

Jewish idea and prejudice. . . . They had not attained truth and freedom by their own exertions; only by laborious learning had they acquired a dim sense of them and certain formulas about them.

In a later essay, the theme of Jewish moral estrangement, of "an existence with no self-consciousness . . . a life spent in a monkish pre-occupation with petty, mechanical, spiritless, and trivial usages . . ."9 is developed and expanded into metaphysical proportions. Judaism becomes the spirit of a "distracted world." Here, the Jew is seen not only as sundered from himself, but from the world as well. Abraham is taken as the paradigm Jew, whose "spirit is the unity, the soul, regulating the entire fate of his posterity." And as Abraham "was a stranger to the soil and men alike," so "The whole world Abraham regarded as simply his opposite; if he did not take it to be a nullity, he looked at it as sustained by the God who was alien to it."<sup>10</sup> The "otherness" of both God and nature, which is of the essence of Judaism, forever frustrates that absolute reconciliation of spirit and nature which is the final object of Hegelianism. Neither the autonomy of Kant's agent nor the future autonomy of Hegel's *Geist*, can tolerate the philosophical heteronomy of Judaism, with its insistence upon an external ground of law, the externality of nature, and the transcendence of God.

Throughout his analysis, Hegel interjects what Professor Rotenstreich, in an earlier study of this subject,<sup>11</sup> has chosen to call "affects of rejection," i.e., racial slurs. There is no need to catalogue more than

9. *On Christianity: Early Theological Writings*, pp. 69, 81, 178.

10. "The Spirit of Christianity and Its Fate," in *On Christianity: Early Theological Writings*, pp. 182 ff.

11. N. Rotenstreich, "Hegel's Image of Judaism," *Jewish Social Studies*, 15, 1, (January, 1953), p. 33.

a few examples, if only to suggest a possible link between his informal attitudes and his philosophical system.

In these early theological writings, Hegel—if not exactly praising Jesus—at least envisions him as being free from some of the worst elements of the Jewish consciousness; he was free “from the contagious sickness of his age and his people; free from the inhibited inertia which expends its one activity on the common needs and conveniences of life . . .” On their part, the Jews were incapable of understanding the message of Jesus, and set against him “a united force of a deeply rooted national pride, a sanctimoniousness interwoven with the whole constitution.”<sup>12</sup> Hence, Jesus failed in “extirpating Jewish superstition,” failed to rid the Jews of “their arrogant and hostile segregation from all other people . . . their obstinate mania for servility.” In thrall to the “dead mechanism of their religious life,” whatever the Jews did adopt from the teachings of Jesus, they “would be likely to manufacture out of it in some way or other something which they could slavishly serve.”<sup>13</sup> All of these illustrations are taken from Hegel’s essay, “The Positivity of the Christian Religion,” which was shortly followed by another study, “The Spirit of Christianity and Its Fate,” whose evaluation of Judaism was no less harsh. Of this essay, Walter Kaufmann notes that it begins with a flourish of “ridiculous anti-Semitism,”<sup>14</sup> but there is no need to continue the catalogue of insults.

As Hegel matured, however, he did not indulge in the vituperative language of these early writings but, rather, developed his fundamental assessment of Judaism; that it was a fixed religious form that expressed the world-view of a people alienated from both their God and nature—a religion fundamentally based upon an unreflective consciousness in which all objectivity is understood only as “otherness.”

In 1807, Hegel’s *Phenomenology of Mind* was published. It immediately established his importance and guaranteed his influence as a philosopher. The work might be described as an autobiography of the Absolute or, even more poetically, as “the tragicomic story of mind’s generic patterns of belief and comportment,”<sup>15</sup> and in this story the Jewish mind makes a brief, but significant, appearance.

In tracing the course of Spirit’s development, the Jewish mind is revealed as exemplifying the alienated attitude of *purely* reflective reason which stands over and against the objective reality of the world. It is a mind unconscious of itself; it is, in short, the same at-

12. *On Christianity*, p. 70.

13. *Ibid.*, pp. 179–181.

14. *Op. cit.*, p. 90.

15. Jacob Loewenberg, *Hegel’s “Phenomenology”: Dialogues on The Life of Mind*, (La Salle, 1965), p. x.

titude of mind to reality which characterized the Jewish consciousness of Hegel's early writings. There is, however, one major and explicit difference. In the *Phenomenology*, the Jewish mind is the last dialectical predecessor to reason's ultimate and victorious union with itself. The Jews

stand directly before the door of salvation . . . this last stage of reason's function of observation is its very worst, and for that reason its complete reversal becomes necessary.<sup>16</sup>

It appears that Judaism is to Hegelianism what Capitalism is to Marxism: the last and worst stage of all preceeding history, a stage whose complete reversal is necessary if history is to find victory in human salvation.

Nevertheless, despite their pressing role in the Hegelian scenario, the Jews find themselves, in Hegel's *Lectures upon the Philosophy of History*,<sup>17</sup> rather slightly treated, and even then the intimations of their world-historical significance are strangely muted. In these lectures, Judea is considered as an Oriental nation, fixed between Syria and Egypt. Of course, Hegel's world is as much philosophic as geographic, and the Oriental world is principally a world-view which occupies a given area. This is the world in which the *Weltgeist* has not yet obtained the consciousness of itself as free and, in the emergence of this consciousness, Judea is more servile than Egypt, but less so than Syria. The consciousness of freedom had to await the coming of the Greeks.

In the Oriental world, it is the Jewish nation which has the honor of setting spirit apart from matter. For the Jews, "Nature is undeified, but not yet understood." In Judaism, the *Weltgeist* finds itself "absolutely free of the Sensuous, and Nature is reduced to something merely external and undivine." However, even if this Abraham-like divorce from sensibility is "a proper estimate of Nature at this stage," this divorce, which negates the unity of man and nature, must itself be negated, and the Jew must give way to the nature-loving Greek.

After discussing the Greeks, among whom "we feel ourselves immediately at home, for we are in the region of Spirit," Hegel turns his attention to the Romans, and in the course of that exposition he once again returns to the historical significance of Judaism because the later Roman Empire has prepared the world for the advent of the Christian spirit, and the sufferings of the Jewish people are an essential ingredient of that spirit. Roman discipline, harsh and universal, has created an outward suffering which must finally "be merged in a sorrow of the inner man." It is the moment for man to "feel

16. Friedrich Hegel, *Phenomenology of Mind*, trans. J. B. Baillie (London, 1964), p. 366.

17. Friedrich Hegel, *The Philosophy of History*, trans. J. Sibree, (New York, 1956).

himself as the negation of himself; he must see that his misery is the misery of his nature—that he is in himself a divided and discordant being.” However, the awareness of inner pain “must be looked for elsewhere than in the properly Roman World. It is this which gives the Jewish People their World-Historical importance and weight.” Suffering Jewry alone can provide the essential dimension of inward pain required for the further advance of the *Weltgeist*. To the external sufferings inflicted by the Roman notion of a pitiless “Fate that crushed down the gods and all genial life in its hard service”<sup>18</sup> is added the inner pain of Judaism, the pain of man alienated from nature, expelled from the Earthly Paradise by reason of his *own* sin. This notion of man’s fall, this “eternal Mythos of Man” and of his need for Divine forgiveness and reconciliation, is the central theme and ultimate value of Judaism for Hegelian history. History records that when the Temple of Zion was destroyed by Rome, the Jews were “scattered to the winds,” there to implant their suffering upon all. Roman Fate and Jewish longing combine to form the universal desire for salvation required for the triumph of the Christian faith.

Judaism, as seen within the larger context of Hegel’s lectures upon the philosophy of history is, however, no more of a significant *nation* than either the Romans or the Greeks. All exist to contribute their moment of consciousness to the Absolute Spirit, a consciousness which comes to fruition only in Hegel’s philosophy.

Hegel delivered his lectures on the philosophy of history at the University of Berlin from 1822 until his death. During this same period he also lectured, in alternate semesters, on the philosophy of religion.<sup>19</sup> Naturally, the topic of Judaism was discussed, but in a context significantly different from that in which it was discussed in the lectures on history. In the lectures on religion the Jews are classified with the Greeks and the Romans. In a Hegelian manner of speaking, the Jews have greatly improved both their historic and philosophic respectability, for now they find themselves in better company, and, furthermore, they have become the paramount exemplars of a definite religious form, the “religion of sublimity [*Erhabenheit*].”

To Hegel, religion is but the second stage in Spirit’s progress to its own realization in the form of Absolute Knowledge. The first appearance of Spirit is in the work of the artist; the third, and final, is in the thought of the philosopher. Spirit progresses in objectivity through art, religion, and philosophy. Now religion, although it has the same content and truth as philosophy, does not present that truth in a form proper to it, i.e., through reason. Religion presents its

18. *Ibid.*, pp. 196, 223, 321.

19. Friedrich Hegel, *Lectures on the Philosophy of Religion*, trans. Rev. E. B. Speirs and J. Burdon Sanderson, 3 vols., (New York, 1968).



truth through the imagination and feelings of those sensitive to the call of the Spirit.

Religious forms, like art forms and philosophic systems, are the particularized expressions of Spirit as it proceeds along its dialectical way. In the dialectic of religions, a dialectic which does not terminate until Absolute Religion or Christianity is reached, Judaism is the first of three stages within the context of what Hegel terms "religions of spiritual individuality." That is to say, religions which have a definite object to worship. Judaism, as the first, must give way to the second, or antithetical, member, in this case the Greek religion. Both Jew and Greek give way to the Roman, which, in turn, is vanquished by the appearance of the Christian. In this schema, the Jew is once again the product of the *Weltgeist* in its most servile stage, the unhappy result of a "servile consciousness [*knechtischen Selbstbewusstseins*]," which "rests obstinately on its particularity." Hence, Jewish consciousness exemplifies perfectly the attitude of a believer in a "sublime" religion, for "sublimity consists in this, that nature is represented as thus entirely negated, in subjection, transitory."

The Jewish religion of sublimity subjects the natural to the spiritual. It is left for the Greek religion of beauty to elevate nature to the level of ideality. It then remains only for the Roman religion of utility [*Zweckmässigkeit*] to lift the Jewish element of particular spirituality and the Greek conception of nature to the level of universality. When the dialectic of the *Weltgeist* has developed a religious object which is both spiritual and universal, the time is ripe for the coming of Christianity.

It is still the sad fate of Judaism, within this context, to be merely the consciousness of alienated spirit, a spirit which places itself and an inimical nature into an unhappy servitude to its own alter ego, Jehovah. To Hegel, it is the unreflective individuality of the Jew that creates an infinite self out of his own finite substance, bringing forth a monster who—in proper Frankensteinian tradition—immediately enslaves its creator.

In the relation in which he stands to his Lord the servant finds his absolute, essential self-consciousness, and in view of Him he annihilates everything in himself.

In this alluring viewpoint we find that equation of egoism and servility and Judaism which well served the disciples of Hegel as a ready key for the solving of "The Jewish Problem."

From his earliest writings through to his final lectures, Hegel's philosophical perspective of Judaism remained unchanged. Judaism was the formalized religious expression of a purely abstract and alienated consciousness, able to reflect only "otherness," never itself, never subjectivity. Estranged from both nature and itself, it created

a God in its own image, a God incapable of relating directly to either nature or man. Nature is governed by miracle and man by laws not of his own making and, so, "The people of God is accordingly a people adopted by covenant and contract on the conditions of fear and service." Indeed,

The conscious perception of the unity of the soul with the Absolute, or of the soul into the bosom of the Absolute has not yet arisen. Man has as yet no inner space, no inner extension, no soul . . .<sup>20</sup>

The vast and empty spaces of Abraham's world have overwhelmed and enslaved the inwardness of man. The "other" has triumphed.

However, there still remains a small but significant reference to the Jews in Hegel's *Philosophy of Right* which compels our attention—for in the compass of a paragraph Hegel expresses the extraordinary judgment, extraordinary both for him and the times, that Jews should be accorded full civil rights.

The judgment is brief enough and important enough to quote almost in its entirety:

But the fierce outcry raised against the Jews . . . ignores the fact that they are, above all, *men* . . . To exclude the Jews from civil rights . . . would rather be to confirm the isolation with which they have been reproached—a result for which the state refusing them rights would be blamable and reproachable, because, by so refusing, it would have misunderstood its own basic principle, its nature as an objective and powerful institution. The exclusion of the Jews from civil rights may be supposed to be a right of the highest kind and may be demanded on that ground; but experience has shown that so to exclude them is the silliest folly, and the way in which governments now treat them has proved itself to be both prudent and dignified.<sup>21</sup>

This passage, alone, has "saved" Hegel for more than one scholar, particularly if the scholar favors both Hegel and Judaism.

In 1959, Walter Kaufmann, in commenting upon Hegel's early theological writings, noted that

the ridiculous anti-Semitism of these pages makes it doubly remarkable that the mature Hegel, in his *Philosophy of Right*, used his considerable influence on behalf of equal rights for Jews.<sup>22</sup>

This same viewpoint occupies the whole of an article by Shlomo Avineri, which argues that Hegel's "negative . . . attitude to *Judaism* did not preclude Hegel from advocating equal rights for *Jews*."<sup>23</sup> Emil L. Fackenheim seems to be the most recent scholar declaring in favor of a mild *rapprochement* between Hegel and the Jews, and uses that

20. Ibid., Vol. 2, pp. 189, 208, 213.

21. *The Philosophy of Right*, p. 169.

22. Kaufmann, *Op. cit.*

23. S. Avineri, "A Note on Hegel's Views on Jewish Emancipation," *Jewish Social Studies*, 25, 2, (April, 1963), p. 146.

same extraordinary passage in *The Philosophy of Right*.<sup>24</sup> In yet another study,<sup>25</sup> Fackenheim seems prepared to declare that Hegel would not be a Hegelian today if that would obtain the desired peace between himself and the Jews. In this regard, it is of some interest to note that Herbert Marcuse, in his influential work, *Reason and Revolution*, develops a lengthy argument presenting National Socialism as "anti-Hegelian in all its aims and principles,"<sup>26</sup> without ever mentioning the subjects of Jews, Judaism, or anti-Semitism. Marcuse, of Jewish background himself, might well have sensed the ease which these subjects could serve as middle terms between Hegel and Hitler. Certainly, the leading German National Socialist philosopher, Alfred Bäumler, was of the firm view that Hitler had transformed Hegel's ideas into reality.<sup>27</sup>

However, there is no reason to dispute the fact that in *The Philosophy of Right*, Hegel did once assert the desirability of the Jews being accorded civil rights. But he did it in a footnote to an explanatory remark that was appended to a paragraph. This is indeed a straw, but it has served as the singular support for all argumentation reconciling Hegel and the Jews—if not Judaism.

The paradigm instance of the argument for reconciliation is found in the previously cited article by Shlomo Avineri, who proposes that Hegel, in the winter of 1818, delivered the statement found in *The Philosophy of Right* footnote to one of his classes at Heidelberg University. At the time, the University was engrossed in the issue of whether or not to admit Jews into fraternities. Therefore,

Although no direct evidence is available, a strong case can be made for the claim that Hegel's remarks about Jewish emancipation did have an impact on the students who attended his lectures on the *Philosophy of Right* and that their decision was a way of starting charity at home.<sup>28</sup>

Avineri's argument is not proven wrong if it be pointed out that *The Philosophy of Right* was first published in 1820, for Hegel could have published what he had said in Heidelberg under the lecture title of "Natural Right and Political Science [*Naturrecht und Staatswissenschaft*]." But it does weaken Avineri's case. Furthermore, in that same winter semester of 1818, Hegel presented two other series of lectures,<sup>29</sup> "Anthropology and Psychology," which later appeared as

24. Emil L. Fackenheim, *The Religious Dimension in Hegel's Thought* (London, 1967), pp. 220 ff.

25. Emil L. Fackenheim/James A. Doull, "Would Hegel Today be a Hegelian?," *Dialogue*, 9 (1970), pp. 222-235.

26. Herbert Marcuse, *Reason and Revolution* (Boston, 1964), p. 418.

27. Alfred Bäumler, "Die verwirklichte Idee," in Leon Polikov and Josef Wulf, *Das dritte Reich und seine Denker* (Berlin, 1959), p. 268.

28. Avineri, *Op cit.*, p. 148.

29. Kuno Fischer, *Hegels Leben, Werke, and Lehre* (Darmstadt, 1963), p. 105.

his work, *The Philosophy of Mind*,<sup>30</sup> and the "History of Philosophy," which was also to appear in published form.<sup>31</sup> To anyone searching in these studies for favorable remarks upon either Jews or Judaism, the task is hopeless. Remarks such as the following, found in Hegel's *Introduction* to his lectures in Anthropology and Psychology are not particularly conducive to the appreciation of Judaism:

The oriental religions, and the Hebrew, too, stop short at the still abstract concept of God and of spirit . . . the abstract god, therefore not yet the true God.

The lectures on the "History of Philosophy" are no less abrasive to Judaism:

Christianity proceeded from Judaism, from self-conscious abjectness and depression. This feeling of nothingness has from the beginning characterized the Jews; a sense of desolation, an abjectness where no reason was, has possession of their life and consciousness.<sup>32</sup>

It would seem that whatever good came to the cause of Jewish civil rights by reason of Hegel's brief remarks in his Political Science lectures—if, indeed, these remarks were made at Heidelberg<sup>33</sup>—would have been cancelled out by the negative viewpoint presented in his concurrent lectures on psychology and the history of philosophy.

Finally, if this passage is carefully examined, it soon becomes obvious that Hegel's arguments for according civil rights to the Jews are based upon the grounds of expediency, nothing more absolute than that. He even adds that depriving Jews of civil rights "may be supposed to be a right of the highest kind and may be demanded on that ground." But, in any case, this passage alone is no cause to look upon Hegelianism and Judaism as compatible world-views, and only the possessor of the most myopic ideological optimism would attempt to do so.

Bruno Bauer, an accomplished Hegelian,<sup>34</sup> put the whole matter quite simply: "Hegel hated nothing more than Judaism."<sup>35</sup> This is, indeed, a judgment as painful as it is extreme, but it contains a substantial measure of truth.

30. Friedrich Hegel, *Philosophy of Mind*, trans. William Wallace (Oxford, 1971).

31. Friedrich Hegel, *History of Philosophy*, trans. E. S. Haldane, 3 vols. (London, 1955).

32. *Ibid.*, III, p. 22.

33. The recent and massive achievement of Karl-Heinz Ilting, the six-volume manuscript study of Hegel's *Philosophy of Right* (Stuttgart, 1973), does not indicate that Hegel remarked on Jewish civil rights prior to 1820.

34. Fischer, *Op. cit.*, p. 213. Bauer is praised for his "insight, learning, speculative talent, and tact," by Marheineke, the editor of Hegel's lectures on religion. Bauer's notes on Hegel's lectures on Religion were employed by Marheineke. Incidentally, in 1829, on Hegel's recommendation, Bauer won the philosophical prize of the University of Berlin.

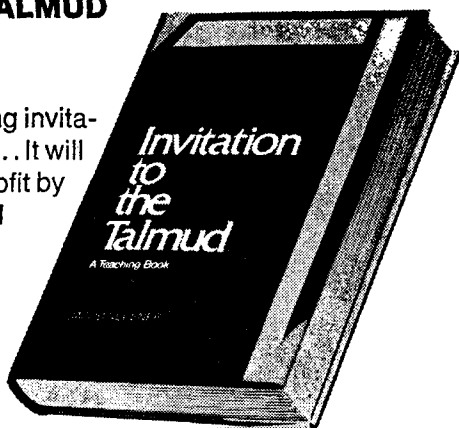
35. "Nichts hasst Hegel mehr, als das Judenthum," from Bauer, *Die Posaune des jüngsten Gerichts über Hegel* (Leipzig, 1841; Photocopy reproduction, Aalen, 1969), p. 106.

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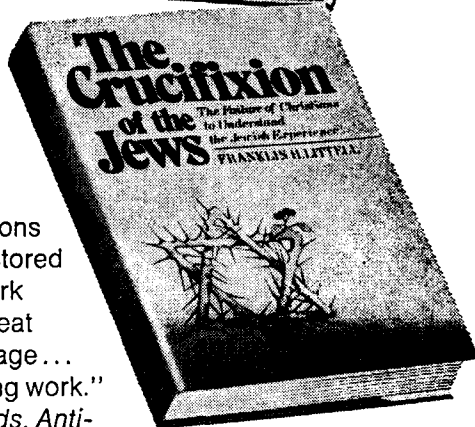
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# *Elements of Male Chauvinism in Classical Halakhah*

PHILLIP SIGAL

## *I The Classical Mind-Set*

One of the arguments validly projected by feminists who are seeking equality for women in halakhah (Jewish religious practice) is that too frequently in the past they were offered tokenism. They also correctly disparage those who trot out a few examples of women who "made it" in Jewish history, like the prophet Deborah or the Renaissance women chronicled by Cecil Roth. For, in truth, whether we care to confess it or not, Judaism possesses distinct elements of what would currently go by the name of "male chauvinism." It may be noble of us to attempt apologetics and argue how we strove from the earliest time to elevate the status of women. Aggadic anti-feminism was often balanced by halakhic progress. The injunction in Leviticus 19:3, that a person should revere his mother and father, placing mother first, was used as evidence of the equality that parents should enjoy in the eyes of children.<sup>1</sup> In this, and other ways, the sages genuinely tried to improve the status of females in the Jewish community. But between the effort to "improve a status," in the first to the fifth centuries, and the current need there is a major gap.

Intellectual integrity today requires that we confess that, although a genuine humanitarian tendency prompted the evolution of the halakhah regarding women, the underlying premise was never altered. Even currently some of my colleagues take the position of one rabbi that "sex-role differences and sexual distraction are intrinsic factors" and that the Women's Movement should view matters from that perspective.<sup>2</sup>

This concept of role differentiation is precisely the obstacle to clarity and equality in the male-female status in Judaism, or, to be more precise, in the halakhah. And to argue from this posture is not a contribution to contemporary issues since it was that posture, dominant in classical times, that influenced the classical halakhah in such a manner that one may term it a product of "male chauvinism" as that phrase is currently used.

A particular mind-set, unfavorable to women, predominated in classical thinking and determined the ensuing halakhic disabilities which prevailed throughout the Middle Ages. Rabbi Yosi b. Yohanan of Jerusalem

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1. Mishnah *Keritot* 6:9.

2. David Feldman, "Women's Role and Jewish Law," *Conservative Judaism*, Vol. 26, No. 4.

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was a scholar of the Maccabean period, a prototype halakhist and one of the earliest "transmitters" of our tradition who bridged the time-span between Torah and Talmud. Although little of his teaching is extant, it is interesting that his comment on women was carefully preserved. He said "Increase not conversation with a woman."<sup>3</sup> We really cannot know what R. Yosi meant, since we have only the speculations in Avot de R. Nathan to go by. In version A we read a variety of explanations, among them that overmuch conversation (however "overmuch" is to be defined) will cause a man harm as he will neglect the study of Torah and, ultimately, inherit *gehinnom*; presumably, this meant that he would go to hell. In version B we are taught that a man's wife would probably repeat anything he tells her in the form of street gossip and create controversy. In both instances, it is taken for granted that women are inferior to men, firstly, in terms of being unworthy of conversation, for apparently it is assumed that conversation with a man will not lead to neglect of Torah and on to hell; and, secondly, that a woman is incapable of keeping confidences.

R. Solomon b. Isaac of Troyes (Rashi, 11th century) in commenting on this passage, wrote that the problem of conversation with women is compounded by the fact that women are frivolous: *datan shel nashim kalah aleyhen*, and cited another commentary which he attributed to Spanish sources, that the Mishnah refers to a menstrual wife, and that a man should not engage in conversation with her lest he be led to sin, presumably by touching her, or worse, having sexual relations. Rabbenu Yonah of Gerona, a 13th century Spanish scholar, was even more explicit. He made it clear that a man's interest in a woman is primarily affected by the sexual facet of life. In a comment on the Mishnah he wrote that a person should not engage in conversation with a woman lest he have "sinful thoughts." He went even further and said that a man should not indulge in conversation with his menstrual wife, nor with the wife of another, lest "his impulse greatly overpower him," and certainly not with a gentile woman because "his impulse will be to lust for her." It would appear, then, that the classical mind-set about women came to its peak with R. Yonah who was called "the Pious," and of whom R. Simon b. Zemah Duran wrote that there was none "like him in speaking of the fear of the Lord and attracting the hearts of men to a life of piety."<sup>4</sup> A study of the commentary of R. Yonah fully validates this description of his piety. It also helps us to grasp the influences that pervaded the

3. Mishnah *Avot* 1:5; *Avot de R. Nathan*, (ed. Solomon Schechter), Version A, Chapter 7, p. 35; Version B, Chapter 15, p. 34 f.

4. These comments by Rashi and R. Yonah are found in the Shulzinger Talmud, 1948 Edition, Volume 16, *Avot*, p. 5a. Cf. B. *Kiddushin* 80b, and *Sabbath* 33b for the frivolity of women. Cf. Salo Baron, *A Social and Religious History of the Jews*, Vol. VI, p. 61.



halakhic process from the days of R. Yosi b. Yohanan of Jerusalem to R. Yonah of Gerona, a span of almost 1500 years.

Another instance of this mind-set prevailing into the Middle Ages is provided by R. Joshua b. Hananyah. He was normally a liberal in halakhic matters but was more prudent in his views when they related to women. Thus, he evinced the same low regard for the character of women when he said that "a woman desires less material goods and more sex rather than more revenue and less sex." Lest we not interpret the enigmatic remark correctly, Tosafot on the text commented that it refers to a woman who has a very busy husband who does a lot of commercial travelling. She prefers that he earn less money, stay at home more and fulfill his connubial duties.<sup>5</sup> And when a case arose before the otherwise liberal R. Joshua, in which a groom accused his bride of deceiving him as to her virginity, and she claimed that she had been a virgin at the time of betrothal, R. Joshua refused to accept her testimony.<sup>6</sup>

These examples point to what we today term an anti-feminist attitude which sees women as sex objects that would attract even scholars. It was, therefore, regarded as safer to keep away from them. More than anything else, this attitude helps to understand the views that prevented women from joining in the prayer quorum, enrolling in the academies, leading a congregation in worship, and so forth. And, once it is accepted that women are frivolous and a source of temptation or sexually distracting, it is inevitable that they would suffer halakhic disabilities. The idea that a woman might be a "friend" or a "colleague" was foreign to this mind-set. Contact with women was deemed dangerous to man's studiousness, fidelity and chastity.

On the other hand, it should not be overlooked that many scholars sought to alleviate the status of women and to overcome certain of the disabilities. It would take a sizeable monograph to survey, sort out, and explicate comprehensively all the rabbinic, gaonic and medieval sources, halakhic and exegetical, in the field of liturgy alone, to demonstrate the wide disparity of view that existed regarding feminine obligation, the right of voluntarily participating in fulfilling *mizvot* such as wearing talit or tefilin (the prayer shawl and phylacteries), or the right to lead others in such liturgical activities as grace after meals, prayer, the Torah service, Megillah reading, constituting part of a prayer quorum, and related matters.

The one thing that can be said with certainty is that women were either exempted or excluded. And, when the Reform Movement arose in the 19th century and sought consciously to revise this state of affairs, zealous controversy arose. It was in connection with the introduction of the confirmation of girls in Germany that Solomon Schechter wrote,

5. B. *Sotah* 21b. See Tosafot there, beginning with word *rozah*.

6. Mishnah *Ketubot* 1:6 ff.

It would be well if in the heat of such controversies both sides would remember the words of R. Zedekiah b. Abraham of Rome who, with regard to a certain difference of opinion on some ritual question, says: "Every man receives reward from God for what he is convinced is the right thing, if this conviction has no other motive but the love of God!"<sup>7</sup>

## II *Economics and the Status of Women*

Although the classical mind-set adumbrated above pervaded the thinking of the halakhists, it is true that they consistently broadened the rights of women. George F. Moore recognized that "the legal status of woman under Jewish law compares to its advantage with that of contemporary civilizations, and represents a development of the biblical legislation consistently favorable to woman."<sup>8</sup> This was certainly even more pronounced in an earlier time in Elephantine, Egypt, where Jewish women had the right to divorce their husbands. Furthermore, it was the influence of Babylonian and Egyptian law upon both the diaspora and the returnees to Palestine during the fifth century B.C.E., as much as the indigenous Jewish halakhah, that brought about a degree of advance.<sup>9</sup> In time, Rabbinic halakhah moved generously forward and one of the areas that best illustrates the matter and, in turn, influenced the trend, was economics.

Jewish women were always more than chattel. They enjoyed definite property rights. Despite R. Gamliel's support of the view of the Tannaite, Admon, who was reluctant to grant it, girls did receive the right to maintenance from a deceased father's estate even if this would deplete their brother's inheritance. They also possessed the right to funds for a dowry from their father's estate. There was a difference of opinion as to whether a younger daughter who became fatherless was entitled to as large a dowry as her older sister who had received it while the father was alive. R. Judah maintained that she was, while others maintained that she was entitled only to a ratio to be determined by the court upon consideration of the present capital assets of the estate. But, in either case, the girl had distinct property claims.<sup>10</sup>

Nevertheless, for centuries, inheritance and a truly meaningful right to property suffered halakhic disability. A widow lacked the right to inherit from her husband, and to be free of dependence upon her children who possessed the sole right of inheritance. It is true that the estate of a man was to sustain his widow and that she was to retain the right to remain in his home. But this applied only in Jerusalem

7. Solomon Schechter, "Women in Temple and Synagogue," *Studies in Judaism*, (first series), p. 325.

8. George Foote Moore, *Judaism*, Vol. II, p. 126.

9. Salo Baron, *Op. cit.*, Vol. I, pp. 112-113.

10. Cf. Mishnah *Ketubot* 4:10, 6:6, and 13:3.

and Galilee and not elsewhere. And, even there, the widow was, in effect, being "maintained." *She did not inherit.*<sup>11</sup>

The foregoing illustrates the inequality of women in the "civil law" segment of halakhah. But amelioration occurred consistently. During the Middle Ages the developing format of the *ketubah* (marriage certificate) reflected the growing position of women, and often a widow even controlled the husband's estate when he died. In fact, women grew economically so powerful that we find the women of Regensburg denounced as "arrogant in their relations to their husbands."<sup>12</sup>

The Middle Ages saw women extensively involved in commercial activity and holding great economic power. As Louis Finkelstein indicated, in a society where women's property rights or possessions were limited, it was proper to excuse them from paying damages. Where their power grew, their responsibilities and, therefore, their "status" in the halakhah inevitably had to grow as well. And, as an example, we find that although, originally, under earlier halakhah, women were not liable to an economic penalty for assault, in the medieval community they were. So, too, although women were not accepted as witnesses in the earlier halakhah, in medieval halakhah they gained certain rights to testify. For instance, after Jewish communities adopted the *herem ha-yishuv*, (that a Jew could settle in a community only if the community voted him that privilege), if a person claimed his settler's right by virtue of inheritance, a woman was accepted as a witness in the case. In other words, as women's economic power grew the male-dominated society began to regard them as more competent and, hence, more believable. Louis Finkelstein aptly summarized, "There can be no doubt that the movement toward 'women's rights,' for such it was, had its origin and compelling force largely in the fact that women began to occupy a prominent position in the economic world."<sup>13</sup>

### III Domestic Relations—*Hilkhot Ishut*

What Louis Finkelstein said about the economic power of women obtains even more so in our time. The economic power of Jewish women, like that of others, has been enormously enhanced as they have become college-educated, professionals, business executives and academicians. Inevitably, this development must have a strong impact upon the halakhah. Contemporary Jewish women do not raise economic questions because their socio-political and economic rights are pro-

11. Mishnah *Ketubot* 4:12; J. *Sotah* 3:4.

12. I. A. Agus, *The Heroic Age of Franco-German Jewry*, p. 289 ff.; p. 309, note 96.

13. Louis Finkelstein, *Jewish Self-Government in the Middle Ages*, p. 14; p. 201; and Additional Note B, pp. 377-379.

tected (or denied) by the civil and criminal law of the land in which they reside. Halakhah can neither reduce nor expand their privileges or disabilities. Today, women quarrel with halakhah in the still-functioning segments of our halakhah, the spheres of "domestic relations" (*ishut*) and ritual. While the phenomenon of "Women's Liberation" in recent years has spotlighted the general role of women in society, bringing into greater scrutiny their rights, privileges, disabilities, prerogatives and obligations, the parallel Jewish movement has highlighted particular halakhic grievances in terms of ritual observance, liturgical leadership, the process of religious divorce and even ordination.

Domestic relations halakhah is one area in which the credibility of halakhah is at stake. G. G. Coulton lauded the superior Jewish civilization in which wife-beating was not tolerated. He pointed to the attempt by R. Perez b. Elijah, during the thirteenth century, to establish legal separation without divorce, under which arrangement a Jewish wife-beater would be separated from his wife and yet be compelled to support her. Yet, apparently, it did not occur to R. Perez to allow the wife to divorce her cruel husband.<sup>14</sup>

The major disability that plagued us until recently was the problem of the *agunah* (the woman who is bound to a husband who has either vanished or refuses to divorce her). Knowledgeable persons know that rabbis have struggled for generations with the puzzle of how to allow the remarriage of an *agunah*. The Rabbinical Assembly Law Committee recently formulated the *tnai kiddushin*, a pre-nuptial agreement to exercise an extra-ordinary annulment procedure to relieve those women who seek relief within the Conservative fold. In the *tnai kiddushin* the bride and groom agree that in the event of the marriage being severed under civil law, the Jewish marriage bond will be retroactively annulled if the husband does not issue a religious divorce. Even where such a pre-nuptial agreement has not been entered into, the annulment procedure may be invoked to liberate wives from their recalcitrant husbands who refuse to issue the religious divorce after having secured a civil decree. The fact remains, however, that this arrangement is an *evasion* and marks the reluctance of the Rabbis to confront the male chauvinism inherent in the divorce legislation dating back over two millenia and still incorporated into the functioning halakhah. The challenge that belies our cherished claim of liberalism is the rule that only a man can execute a Jewish religious divorce, except in some very unusual circumstances. Even in the annulment proceedings of the Rabbinical Assembly Law Committee this is underscored by the fact that the recalcitrant husband is *not* free to remarry after

14. G. G. Coulton, *Medieval Panorama*, pp. 69-71, 216 f.

the annulment until he executes a regular religious divorce. In other words, his power and prerogative are still maintained, while “generously” offering women “relief.”<sup>15</sup>

Under the original Deuteronomic legislation (Deut. 24:1), divorce was, indeed, an advance in women's rights, a veritable breakthrough, for it required that a husband no longer arbitrarily dismiss his wife from his home and deprive her of her status. He had to execute a formal document. The Deuteronomist, however, had written, “If a man consummates his marriage and then discovers he does not love his wife because he has discovered something unchaste about her, he shall execute a writ of divorce . . .” And the sages took this literally: *he* shall execute the writ, and forever empowered the husband to effect a divorce except, as noted before, under certain circumstances, for a discussion of which we will not digress. This exclusive husband-power that obtains in the usual case is a female disability that is still tormenting us after more than two millenia.

In this respect, the Jewish approach to divorce, even in classical Rabbinic times, was inferior to that of the Hellenistic world in which there obtained a mutual right for the husband and wife to divorce one another. In a lengthy discussion of the meaning of the Deuteronomic verse, the Tannaites did not even come near to suggesting the right of a woman to initiate a divorce, almost as if on this one subject there were literal-minded unanimity.<sup>16</sup>

Deuteronomy had said that when a man loses his love for his wife because he has discovered something unchaste about her, he may divorce her. The Hillelites refused to limit divorce to infidelity, using the term “something” to expand the right of divorce from “unchasteness” to anything that offends him. Rabbi Akiva agreed that he may divorce her even if he falls in love with a better looking girl. One scholar has argued that the Hillelite position on “easy divorce” was, in effect, a “conservatism,” allowing greater play for the man's arbitrariness. I doubt, however, whether this was the case. They refused to limit the cause of divorce to so restrictive a posture that divorce would become nearly impossible. This was a liberal position, and the Shammaite position, limiting divorce to cases of infidelity, led directly to the New Testament and later Christian and Western insistence that only adultery was a valid cause for divorce. However, by agreeing that the husband alone could issue the writ, the usually perceptive Hillelites failed. The male chauvinist attitude prevailed here as it did in another instance, that which defined “adultery” as being between

15. Rabbinical Assembly Law Committee Archives for 1967. Cf. R. A. Proceedings, 1968, p. 229.

16. See *Sifrei*, Deuteronomy, ed. Louis Finkelstein, 269, p. 288; *Midrash Rabbah*, Genesis 18.

a married woman with *any* man other than her husband, or between a married man with a married woman. In effect, a man could have sexual relations with someone who was not his wife as long as she was unmarried. If the male fell in love with another woman he could marry her, but if his wife was guilty of infidelity she was damned. This placed the male a notch above the female in sexual rights.<sup>17</sup> The same truth is seen in the right of men to polygamy while a prohibition prevents a woman from engaging in polyandry. The only basis of this can be the concept that the wife is the private preserve of a male who "possesses" her.

The decision-making power, that a woman may be divorced with or without her consent, but that a man could not be divorced against his will is explicit in the Mishnah. In fairness to the classical scholars, however, it should be emphasized that the male's arbitrary rights were constantly limited during Mishnaic times so that he was unable to divorce his wife when she was insane or in captivity, or if he was insane, temporarily deranged or while intoxicated. Ultimately, his right was fully restricted by R. Gershom, as is attested by later scholars. Thus, Moses Isserles asserts, without qualification, that R. Gershom enjoined a man from divorcing his wife without her consent under pain of excommunication and, in turn, Isserles reaffirmed that "nowadays one should not divorce his wife without her consent."<sup>18</sup> The best that was ever done for the woman, however, was to allow her to request a court to compel her husband to divorce her. She never received the right to execute the writ. In one instance, alone, did women seem to rebel against their disability. They began to refuse marriage during the first century before the common era until Shimon b. Shetah introduced the marriage certificate, the *ketubah*, which gave them economic security by placing a lien upon the husband's property. In truth, this became a major instrument of women's "lib." Furthermore, the consistent expansion of female rights and the protection of her interests can be ascertained from a variety of halakhic provisions that reduced or minimized the male power. A woman could request her freedom when her husband fell victim to a loathsome disease or if he insisted on engaging in unsavory occupations, if he was unwilling, or unable, to support her and to provide her conjugal rights. She could sue for divorce, for instance, if he was consistently impotent or if he unduly restricted her freedom to attend funerals or weddings, if he became an apostate or committed a crime and became a fugitive from justice, was openly

17. Israel Abrahams, *Studies in Pharisaism and the Gospels*, p. 71 f, p. 3.

18. Mishnah *Yevamot* 14:1; *Gittin* 7:1. *Shulhan Arukh Even ha-Ezer* 119:6. Louis Finkelstein, *Jewish Self-Government in the Middle Ages*, p. 30, 247. But while Finkelstein does not reproduce an original document, he also cites the ban on compulsory divorce.

licentious or treated her violently. But even where she could "sue" for a divorce, the husband had to issue it.<sup>19</sup>

There were times when the Rabbis abrogated Torah halakhah.<sup>20</sup> But there were instances, and female rights are an example, where they did not bring themselves to go that far. Thus, under Biblical legislation, a father could sell his daughter into slavery. The Talmud limited this right to infancy and assured her emancipation at puberty. But why did they not abolish the right of the father?<sup>21</sup> A woman had the right to reject a prospective groom through a formula called *miun*, a term denoting "rejection." This was a retroactive power, and was utilized under specific circumstances. In one instance, it may have been when a father imposed a marriage upon his minor daughter (under twelve years and a day). Although this was a valid marriage in itself, once the father had exercised this power, he lost any future absolute right over his daughter and, consequently, if, while she still was a minor, she became widowed or divorced and was remarried immediately, she had the power of *miun*; she could "walk out" of the second marriage by rejecting it. In another instance, the father might have died and her brother or mother imposed a marriage upon her. In this case, also, she was entitled to exercise the right of *miun* when she reached her majority. The option of *miun* was exercised by a relatively simple procedure. All the woman had to do was to declare before two witnesses, "I do not wish to live with this man," and subsequently an appropriate document attesting to the rejection was prepared and signed.<sup>22</sup>

This was kind as far as it went. But why was *miun* applied only to a second marriage imposed by a father, and not to the first? And why did the Rabbis not abolish the whole concept of an imposed marriage? Unfortunately, the Rabbis did not go even as far as did the Jews living in Egypt. It is apparent from a female cult of the "Queen of Heaven" that there was a rise there in the status of women. This may have been due, as Salo Baron suggests, to a shortage of women in new, far-flung communities composed of enterprising young male migrants streaming to the diaspora. This is certainly evident in the Elephantine papyri, where women were independently engaged in commercial activities and had the right to divorce their husbands by making a declaration *baedah*, a public declaration before the congregation, that they were divorcing them.<sup>23</sup> This could not happen with Palestinian

19. B. *Ketubot* 82b, and J. *Ketubot* 32a; Tosefta *Ketubot* 12:1; Mishnah *Ketubot* 5:5, 8-9; 7:2-5, 9f.; *Nedarim* 11:12.

20. Phillip Sigal, *New Dimensions in Judaism*, 1972. *Passim*. See Index under "Abrogation."

21. Exodus 21:7, B. *Gittin* 65a.

22. B. *Yevamot* 107a, 108a; Maimonides, *Mishneh Torah Hilkhoh Gerushin* 11:3, Joseph Karo, *Even Ha-ezer* 155:3.

23. Salo Baron, *Op. cit.* Vol. I, p. 112; p. 347, note 15.



halakhah. Obviously, the Elephantine halakhah was influenced by Hellenistic culture in which a wife enjoyed the right to divorce her husband, while the normative post-Maccabean Palestinian halakhah reacted against this, as against other Hellenistic standards. I daresay that the attitude expressed in Avot relating to conversing with women was influenced by the "new morality" prevalent in the Graeco-Roman world.

#### IV Rite and Right

On the contemporary scene, the area of liturgy is of even more immediate and functional concern. This would encompass the participation and leadership of women in public worship in all its facets, and in enjoying all the rights and privileges, as well as the obligations, related to the ritual life of Judaism on an equal basis with men. In what sense is a woman able to function as a Jew on the same level as a man? Should she? Is the halakhah absolutely unredeemable, or are there facets of the halakhah that can be reinterpreted to provide a more meaningful halakhic structure in our day? We will, therefore, turn to examine the rights and privileges of women related to the fulfillment of rituals which are normally identified as "male" prerogatives.<sup>24</sup>

Solomon Schechter has shown that women's earliest participation in public worship can be dated to the pre-Temple era when they performed some function at the portable sanctuary. We cannot be certain of the meaning in Exodus 38:8 where Scripture describes *hazovot asher zavoo*, the women who did something, because, philologically, the use of the term in this context is uncertain. All we can say with certainty is that the term *zavah* normally denotes group activity, in war or in other forms of service. The term is just as obscure in I Samuel 2:22, except that in that context it becomes almost apparent that whether their function was such or not, the *zovot* were used in ritualistic or cultic prostitution. If it is correct, therefore, that these women were used in one form or another as participants in a fertility cult, it is clear that Onkelos, the near-anonymous Aramaic translator of the Torah, was quite close to the truth when he demurred from describing their specific function with clarity and interpreted the verse to signify "women who came to pray."<sup>25</sup> As Schechter points out, therefore, what

24. For a representative selection of sources cataloguing what a female is obligated to do or exempt from doing, see Mishnah *Berakhot* 3:3, *Kiddushin* 1:7-8, *Tosefta Sotah* 2:8, *Berakhot* 20b and B. *Kiddushin* 33b, 34a, and throughout the Talmud.

25. "Onkelos" was probably an erroneous Aramaic variant for Aquila who translated the Torah into Greek around 100 C.E. The *Targum*, the "Onkelos" translation which we have, is probably a cumulative product which Baron dates, (*Op. cit.*, Vol. II, p. 147), "from any time between the second and sixth century," with its origins going as far back as the Maccabean age or earlier. See, also, Baron, *Ibid.*, p. 386, note 25, and Vol. VI, p. 256.

Hannah did, as described in I Samuel 1:12, had a long precedent. Probably the reason that Eli was so disturbed was that she was doing it privately and not participating as one of the *zovot*, the regularly appointed female cultists.

In post-exilic days, the women were part of the congregation, as is stated in a very natural manner by the author of Nehemiah, and they continued to be so in the early Tannaitic period, as is seen in the Apocryphal writings. Differences of opinion existed, naturally, but there was a continuous struggle to give women their due in the face of the mind-set that denied them their rights. Thus, R. Eliezer held that one who taught his daughter Torah was guilty of teaching her *tiflut*, a word interpreted in the Talmud to signify *armumit*, "subtlety." This could only reinforce the fear men had lest women embarrass them by having knowledge and using it. Ben Azzai, on the other hand, a presumed bachelor who is said to have "loved and lost," perhaps even to have been secretly married to the daughter of R. Akiva, held that it was obligatory to teach one's daughter Torah. But in the medieval manuals the halakhah was decided in favor of R. Eliezer and the negative generally held sway until the 20th century. It was the same R. Eliezer who said that women belong with the spinning wheel. When a "wise woman," as the Talmud describes her, asked him to explain a Scriptural problem, he replied that women should stick to their distaff!<sup>26</sup>

The problem of feminine participation in liturgical and ritualistic facets of Judaism was bound up with the concept of *mizvat aseh she-hazman geramah* "a positive religious deed mandated by a specific point in time:" "as regards a *mizvah* (religious obligation) determined by a specific point in time, men are obligated, women are exempt; but when a *mizvah* is not determined by a specific time element, both men and women are equally obligated; and in all cases of a prohibition, whether determined by a point in time or not, both men and women are obligated. . . ." Tosefta explains that a *mizvah* determined by a specific point in time is donning *tefilin* in the morning, and one not determined by a point in time is, for example, returning a lost object to its rightful owner.<sup>27</sup> Actually, we have here a very pragmatic balance. It is apparent that the Rabbis attempted, on the one hand, to *excuse* (not prohibit) women from the obligation to pursue fastidiously the fulfillment of certain rituals, and, on the other hand, to *include* them in those that were not tightly bound to a point in time. There is a vast gulf between "prohibited" and "exempt," and it is clear that while women were not "obligated" they were not prohibited.

Furthermore, the same R. Eliezer who was opposed to educating

26. Mishnah *Sotah* 3:4, B. *Sotah* 20a, 21b; *Yoma* 66b.

27. Mishnah *Kiddushin* 1:7, Tosefta *Kiddushin* 1:8.

girls, taught that in all matters related to civil and criminal law women were on an equal footing.<sup>28</sup> On the surface this seems liberal. But, actually, it is part of the mind-set that argued that, although women do not receive equal privileges, they have equal obligations to behave. Yet, although they were subject to the same civil-criminal code, they were *not* permitted to hold judicial office or to serve as witnesses. This question of their right to be witnesses under that sweeping "equality" was raised by the medieval scholars in *Tosafot* and it appears that, although at one time they were accepted, the halakhah was ultimately reversed.<sup>29</sup>

There can be only one reason for declaring women "equal" and denying them equality: that what we today term "male chauvinism" was not prepared to offer equality where it would tacitly recognize their intellectual capacity, as in the case of giving testimony or holding judicial office. On the other hand, the contrary view was always in evidence. For instance, in the view of R. Yohanan, a Jerusalemite sage of the 2nd century, women were permitted to circumcise children, while the Babylonian sage, Rav, maintained that women may not perform circumcision. Maimonides, R. Isaac Alfasi and R. Joseph Karo all correctly upheld the view of R. Yohanan over Rav, for in a controversy over a ruling between Rav and R. Yohanan, the halakhah follows R. Yohanan. Nevertheless, R. Moses Isserles, in his supplement to Karo, improperly interjected that "some say" that a woman should not perform a circumcision "and this is the custom." Those were always the deadly words. Once a "custom" was declared by early modern commentators it became stronger than a Sinaitic revelation, and several centuries of well-intentioned Jews have had hang-ups about these "customs" ever since the 16th century.<sup>30</sup>

We see here an interesting phenomenon: that women were regarded as eligible for certain rituals at an earlier date, and barred from performing them at a later date. But they were apparently permitted rituals in which there was no chance of sexual attraction for men. Thus, women were permitted to slaughter animals. But they were not allowed to conduct an elementary school for children lest when the fathers bring their children to the school they find an opportunity to be closeted alone with the teacher and sin would result. Here we have

28. B. *Kiddushin* 35a,b.

29. B. *Baba Kama* 15a, based on Exodus 21:1. *Sifrei* on Numbers, ed. by Horovitz, p. 5, and Deuteronomy 190, ed. Louis Finkelstein, p. 23. Cf. *Tosafot Baba Kama* 15a, passage beginning "*asher*." See, also, Boaz Cohen, *Jewish and Roman Law*, Vol. I, p. 128 f. notes 18–19.

30. B. *Avodah Zarah* 27a; Maimonides *Hilkhhot Milah* 2:1; R. Isaac Alfasi, on the volume *Shabbat*, p. 61b, toward the end of the 19th chapter; R. Joseph Karo, *Yoreh Deyah*, 264:1, and Isserles on that paragraph. See also the note of Elijah of Vilna on this text.

a case where sexual anxiety led to sex discrimination. True, there was sexual anxiety for the bachelor as well, but not for the married man. The married woman, however, was barred as well; since woman is a sex-object there is little else that can result but sin.<sup>31</sup>

Similarly, there were other areas in which women first enjoyed the same religious rights as men, but were later barred. They were permitted to be called to the Torah but not allowed to read before the public *mipnai k'vod ha-zibur*, "out of respect to the congregation."<sup>32</sup> What does that mean? Rashi was silent on this passage. He must have been puzzled that the Rabbis were guilty of such ambivalence: women may be called but may not read! His problem would not be why they may not read, but why may they be called? As for Maimonides, the perennial conservative, he agreed with the second point, that women are not to read before the public "out of respect for the congregation" and omitted the first part that they may be called! In a commentary on the Tosefta it is recorded that "although a woman counts among the quorum to be called she is not to read in public out of respect for the congregation." In the light of the mind-set I have posited, because a woman is frivolous and is sexually distracting, it is understandable that she would be barred from standing before the public to read an entire passage of Scripture. Another possibility is that the correct reading of the text is somewhat different from the one given in the Talmud or as "corrected" by Elijah of Vilna on the Tosefta, but, rather, as is cited in our traditional Tosefta text: "All may ascend to the Torah in the quorum of seven (to be called on the Sabbath), even a woman or a minor; but we do not *fetch* a woman to read before the public."<sup>33</sup> In other words, if there is no competent male we do not go looking for a female to read before the public. But there is no argument against her being called. The Talmud then modified the Tosefta by adding the sentiment "out of respect." In a male-dominated society it was felt that if almost everyone was incompetent they should find a competent male and not take the first female who came along. This is obviously a tribute to the competence of ancient women and shows that, despite R. Eliezer, women were studying and becoming learned. "Out of respect for the congregation" would then simply mean: not to offend the sensitivities of the incompetent men.

31. R. Joseph Karo, *Yoreh Deyah* 1:1. Mishnah *Kiddushin* 4:10; B. *Kiddushin* 82a; Maimonides *Hilkhot Talmud Torah*, 2:4, and *Kesef Mishneh* there. R. Joseph Karo, *Yoreh Deyah* 245:21.

32. B. *Megillah* 23a. Cf. R. Hananel on the text, R. Isaac Alfasi, 13a and Rabbenu Asher 3:5. But see, also, Rabbenu Nissim on Alfasi who says that a woman may read.

33. Maimonides, *Hilkhot Tefilah* 21:17. Cf. R. Joseph Karo, *Orah Hayyim* 282:3. Tosefta 3:11 (in some editions 4:11). Cf. *Minhot Bikkurim*, note 5. Cf. Elijah of Vilna's textual notes. The commentator, Hasdai David, on Tosefta, explicitly states that "according to law" a woman may be called.

Some medieval Rabbis, especially if they were fathers of daughters, were troubled by the lack of intellectual integrity involved in this halakhic attitude to women. Thus, we are told how one scholar included his daughters in the quorum for Grace after meals, although the Mishnah declared that a quorum is not gathered for women. He leaned, however, to an extra-Mishnaic source which held that women may form a female quorum. From giving women "separate, but equal" rights, it is a short step toward integrated equality. The medieval Tosafist, R. Abraham, encouraged his daughters to join in the quorum, although the compiler of Tosafot informs us that "society does not follow this custom."<sup>34</sup>

This problem of "obligation" is central to the issue, for it also involves the correlative question of whether a person who is not "obligated" may lead a public quorum in fulfillment of ritual obligations. Jacob Lauterbach argues against the ordination of women as rabbis on the grounds that "one who is not obligated cannot serve as the instrument to lead the public in fulfillment of its obligation."<sup>35</sup> It appears, however, that some medieval scholars could conceive of women serving as judges but never acted on their short-lived impulses. Moreover, women lacked a power base as they were also not eligible to serve as lay leaders, for example, in the capacity of *parnas*, or president, of a community. This latter disability was based upon the verses in the Bible relating to the Israelite monarchy in which the king (president, *parnas*, in modern or medieval terms) was referred to as *ish*, a man. But even in these instances, there was a degree of ambivalence. While the Midrash Rabbah, within its folkloristic context, declared that "women cannot render decisions," there were halakhic opinions that a woman *may* offer legal directives or that, at least, a male scholar may rely upon feminine expertise and then render the decision himself.<sup>36</sup> It is evident that if we were to apply the sources to ordination we would have to overcome ambiguity. To surmount such ambiguity, certain halakhists took explicit prohibitive postures. Thus, when they held that a woman cannot read the Torah in public out of respect for men, they added that in order to keep her totally unrelated to the Torah she is even disqualified from writing a scroll!<sup>37</sup>

The sounding of the Shofar provides an interesting case-study.

34. Tosafot *Berakhot* 45b.

35. Jacob Lauterbach, "Ordination of Women," in *Studies in Jewish Law*, pp. 240-246. See Mishnah *Rosh Hashanah* 3:8, B. *Berakhot* 20 b. It would seem to me, however, that the reason that women were not ordained was a carry-over from their having been barred to serve as judges.

36. See Tosafot on B. *Niddah* 50a; J. *Shavuot* 4:1 35b; J. *Sanhedrin* 3:10, 21c; B. *Gittin* 5b; *Midrash Rabbah*, Numbers 10:5; R. Joseph Karo, *Hoshen Mishpat* 7:4; *Sifrei* on Deuteronomy, ed. Louis Finkelstein, 157, p. 209. Cf. also *Shaarei Teshuvah* on *Orah Hayyim* 461, note 17.

37. B. *Gittin* 45b, *Soferim* 1:14.

The Mishnah states that anyone who is not obligated may not perform the ritual for the public. But it does not specify that women may not perform the ritual. The Mishnah then goes on to say that one does not restrain children from sounding the Shofar. When the Talmud asks whether we restrain women the reply is that we do not. That a woman *may* sound the shofar is the opinion of every one of the significant sages down through the generations, many of whom also maintained that she can recite the blessing—contrary to Joseph Karo who, in the 16th century,<sup>38</sup> denied her that privilege. Admittedly, they do not specify that she can do it as the public leader. Nevertheless, they take the position that because a woman is “intelligent” she can, in the words of R. Joel Sirkes, “fully decide to include herself under the obligation.” Therefore, we have every right to take one further step in the evolution of the halakhah and declare that if a woman accepts as an obligation a *mizvah* from which the Mishnah exempts her, she may then fulfill all the functions a man is entitled to fulfill, in private and in public. For the crux of the whole matter is, as Rashi phrased it: “Although Scripture exempted her there is no prohibition; and this applies to every *mizvah* determined by a point in time.”<sup>39</sup>

#### V *Reading the Megillah*

The reading of the Megillah and the wearing of the talit, may serve as further illustrations of how we might vigorously render contemporary halakhah more effective. A third relevant subject, the question of counting women in a minyan, the public prayer quorum, is an exciting illustration, and I have published that as a separate essay in a recent issue of JUDAISM.<sup>40</sup>

In the matter of Megillah there is a clear demarcation in the primary classical sources, the Mishnah and the Tosefta. The Mishnah maintains that “everyone (and, by implication, including women) is eligible to read the Megillah. There is no reason not to interpret this bold statement as including a woman’s right to be a public reader who enables the congregation, including its males, to fulfill the *mizvah* of hearing the Megillah. And, as a matter of fact, R. Joshua b. Levi did interpret the Mishnah quite clearly as implying that women are *obligated* in the reading of the Megillah and Rashi explicitly declared that this obligation makes them eligible to read in public and to

38. Mishnah *Rosh Hashanah* 4:10, B. *Rosh Hashanah* 32b, 33a, B. *Eruvin* 96b; R. Joseph Karo, *Orah Hayyim*, 589:6, and see the commentaries thereon which list R. Tam, Rabbi Asher b. Jacob, R. Nissim, Maimonides, Moses Isserles, and R. Joel Sirkes among many who permit women to say the blessing and sound the shofar. Cf. *Mahazit Ha-shekel* on the *Orah Hayyim* text. Cf. R. Asher ben Jacob on R. H. 4:7.

39. See Rashi on B. *Rosh Hashanah* 33a, passage beginning *somkhot reshut*.

40. See JUDAISM, Spring 1974.

enable men to fulfill the *mizvah*. In the Palestinian Talmud, however, Bar Kappara apparently ignored the simple text of the Mishnah and implied that a man should read the Megillah for women and children.<sup>41</sup>

On the other hand, the parallel Tannaitic source, Tosefta, asserted that women are "exempt" and cannot enable the public to fulfill its obligation. Actually, there was one variant which did not specify that they cannot enable the public to fulfill its obligation. This appears from the manner in which Tosefta is quoted by the Tosafists on *Erkkin* in the name of *Halakhot Gedolot*, an 8th century compilation by R. Yehudai Gaon.

Rabbenu Gershom (10th century) asserted that, because everyone who is obligated to fulfill a ritual is able to lead the public in its obligation, and because everyone is obligated to hear the Megillah, *everyone* may read before the public. Rashi and Obadiah Bartinoro agreed. Tosafot, following *Halakhot Gedolot*, took the view that women could not lead the public because, although they had to hear the Megillah, they were exempt from reading it! Nevertheless, Tosafot allowed women to lead other women. Tosefta had limited the ritual roles of other persons such as the *androgenes*, the bi-sexual, and Tosafot argued that certainly women cannot be considered superior to a bi-sexual!<sup>42</sup>

In this melee of sources we find selectivity. *Halakhot Gedolot* used part of the Tosefta to exclude women from leading the public, declared women obligated to hear the Megillah and allowed them to read *is before* other women. Rabbenu Hananel adopted the unqualified statement of R. Joshua b. Levi in the Talmud that women are obligated to hear the Megillah. Normative halakhic logic would imply that, if women were obligated to the *mizvah* of hearing, they might read it, and, in accordance with R. Gershom, this would signify that they may lead the public. Barring the intrusion of sexism, halakhists would have no reason to deviate from this normal pattern. Joseph Karo cited only "some" as holding that a woman cannot enable men to fulfill the *mizvah* of hearing the Megillah. Nevertheless, as so frequently occurred in Eastern Europe, the scholars adopted the more restrictive "some say," as is evident in the commentaries on Karo.<sup>43</sup>

41. Mishnah *Megillah* 2:4, B. *Megillah* 4a, B. *Erkkin* 2b, 3a and Rashi on *Erkkin* 3a. *Megillah* 2:4, 73b.

42. Tosefta *Megillah* 2:4. Tosafot on *Erkkin* 3a, beginning word, *laasuyei nashim*. R. Gershom on *Erkkin* 2b. Tosafot on *Megillah* 4a, beginning word *nashim*. Louis Ginzberg discusses the origin and development of the work *Halakhot Gedolot* from its inception by Yehudai Gaon through its later supplements and the variants that reached the Franco-German and Hispano-Provençal scholars in his *Gaonica*, Vol. I, p. 103-111.

43. R. Joseph Karo, *Orah Hayyim* 689:2, and the various commentaries on the text who limit the role of women in Megillah reading.



The divergence here discussed thus goes back to the Mishnah and Tosefta, continuing through a parallel divergence between R. Joshua b. Levi and Bar Kappara in the Babylonian and Palestinian Talmuds respectively. As the pupils of R. Meier of Rotenberg explained, the former complied with the Mishnah, while Bar Kappara adopted the view of Tosefta. The disparity surfaces again in medieval and modern commentaries with R. Gershom, Rashi, Bartinoro and Maimonides following the Mishnah's affirmative view and *Halakhhot Gellot*, the Tosafists, Karo and Tiferet Yisrael assuming the Tosefta's conservative posture.<sup>44</sup>

We derive from this the right of selectivity and expansion in the halakhah. It is clearly valid to adopt a minimum or conservative posture that a woman must only *hear* the Megillah. But it is also valid to accept the built-in escalation in the halakhah that, once she is obligated to hear it, she should be allowed to read it; and, if to read it, to lead the general public. There is nothing inherently contradictory to this in the halakhah. Only the sexist argument that she is "distracting" would oppose it. Indeed, it is a *mizvah* determined by time, but in such cases she is only "exempt" not "prohibited." Even the conservative view in the Tosefta indicated only an "exemption," and never was a prohibition issued except on her right to lead. But once she chooses to waive the exemption and opts to place herself under the obligation she may say the blessing and function as a public reader.

## VI *Wearing the Talit*

It is apparent, from our sources, that there is nothing inherently or innately wrong with women wearing tefilin or a talit, and they were excused from these axioms only because they were regarded as being determined by a time specification. If the talit were also worn at night or if tefilin were worn at night, on Sabbaths and Festivals, women would presumably also be obligated.

Something of the same process of halakhic development, as obtained in the matter of Megillah reading, inheres in the *mizvah* of the talit. The Tannaites diverge in their views, one espousing the *obligation* of women to wear the talit, and the other denying them the right. In the Talmud, R. Simon adopted the exclusionary view because he regarded the *mizvah* as applying only to the daytime, making it a *mizvah she-hazman geramah*, determined by a time specification. Again, the classical scholars took one side or the other. Rabbi Asher b. Jacob agreed with R. Simon and concluded that women should not wear

44. Maimonides *Hilkhot Megillah* 1:1 and *Hagahot Maimuniyot* on the text; Karo, *Orah Hayyim* 689:1, *Tiferet Yisrael* on the Mishnah *Megillah* 2:4, note 27.

the talit. Maimonides and Karo concluded that they *may*. Moses Isserles insisted that they should *not*.<sup>45</sup>

A correlative question was whether or not a woman may, or should, recite the blessing when she wears the talit. Maimonides wrote, "If women wish to wear the talit they do not say the blessing," incidentally providing us with the historical perspective that women wanted to, and were allowed to, but that, in his view, they were not to recite the blessing. Although he bowed to the reality of women wearing the talit, his innate halakhic conservatism, his low opinion of women and, perhaps, his Islamic environment, prevented him from rising to the occasion and permitting the blessing. Following his lead, R. Joseph Karo maintained that since a woman is exempt she should not say the blessing. On the other hand, R. Abraham b. David, a commentator on Maimonides, disputed this view and argued that when one who is exempt chooses to fulfill the ritual he may recite the appropriate blessing. And, similarly, Moses Isserles disagreed with Karo, as did many scholars whom Isserles cited. Although discouraging her from wearing the talit, Isserles allowed the blessing.<sup>46</sup>

Without pursuing additional sources and commentaries, it appears that the ramifications for progressive development are clear. At its very conservative posture, if the fringes and, therefore, the talit, are considered a *mizvah* determined by time, this does not inevitably cast a prohibition upon a woman's participation in its observance. To be "exempt" is not to be prohibited. The very language of the *Beraita* is simply "R. Simon exempted women." Perhaps in the context of his day, to be kind to him, he imagined he was doing them a favor, not behaving as what we today would call a "sexist." In the case of tefilin, too, we find that not "everyone," presumably including women, was obligated to don them. On the other hand, we have the Mishnah which declares that women, along with slaves and minors, were "exempt." Maimonides was not specific, merely indicating that anyone who is exempt from reading the Shema is exempt from donning tefilin!<sup>47</sup>

45. Tosefta *Kiddushin* 1:8; B. *Menahot* 43a; B. *Erkkin* 3b. Cf. *Hilkhot Ketanot* on *Zizit* by R. Asher b. Jacob, Chapter 1.

Maimonides, *Hilkhot Zizit* 3:8-9; R. Joseph Karo, *Orah Hayyim* 17:2 and notes of Moses Isserles there.

46. B. *Rosh Hashanah* 33a and Tosafot, beginning with the word *Ha*. Maimonides, *Hilkhot Zizit* 3:9. Cf. *Rabad* on the text. R. Joseph Karo, *Orah Hayyim* 17:2 and the notes of Moses Isserles there.

47. B. *Erkkin* 2b, Mishnah *Berakhot* 3:2, B. *Berakhot* 20a,b. R. Asher b. Jacob's *Hilkhot Ketanot* on *Tefilin*, Section 29. On that text a commentator cites as a possible reason for women being exempt that they are unable carefully to guard their purity! Maimonides *Hilkhot Tefilin* 4:13.

VII *Conclusion*

The Rabbis were confronted with a whole host of rituals and there was a great variety of sentiment regarding female involvement. The sources are divergent, often contradictory, regarding the same ritual, and comparative studies are illuminating. Women were exempt from the Shema but pious women always said it. Women were obligated to say the Grace after meals but were excluded from the quorum. The simple fact is that, with the mind-set described at the beginning of the paper, it was difficult for the authorities of classical Judaism to arrive at a posture of religious equality for males and females. But we live in a new age, we possess a wholly new orientation toward the relationship of the sexes. We even compel our girls to accept the same education as boys and they excel. It behooves us immediately to remove all obstacles to the full participation of women, privately and publicly, in all of the rituals of Judaism and to declare inoperative the halakhic category of *mizvot aseh she-hazman geramah* that women are "exempt" from rituals determined by a specific point in time.

"Ritual," man's acting out of his relationship with God, is, after all, a pattern that should inspire him to love of his fellowman. There is no logical or pious reason to exclude women from participation in religious exercises if they wish to have opportunities similar to men in fulfilling what have been aptly termed "action-symbols" of Judaism. To include women is not to risk a diminishing of male participation but to enhance family involvement in authentic faith. The "family pew" has not weakened religion, nor would a woman walking in procession with her husband and children carrying her *lulav* and *etrog*. The inclusion of women will not prejudice the male role in Judaism. It will remove an ancient injustice born of a mind-set which has lost its validity.

# Women as Sources of Torah in the Rabbinic Tradition

ANNE GOLDFELD

TALMUDIC THINKING CAN BE REGARDED AS AN open-ended system in which no question is ultimately solved and very few definitive decisions are ever reached. Underlying all Talmudic thought is the conviction that the give and take of dialogue, and the process of inquiry, together, point the way to deeper and more profound understanding of Jewish law. Unfortunately, in relation to the status of women in the halakhah, this open approach has been all but abandoned. The culture's rigid definitions of women and qualities of femininity center almost exclusively on the female's socio-biological functions of wife and mother. In creating the woman's role, the culture seems consciously to have sifted out opinions with a certain bias from the numerous other opinions found within the Talmud. Consequently, the traditional view of the woman's role is often significantly more limited than is suggested by the texts themselves. For in the pages of the Talmud, women appear who not only seem to have broken out of the female stereotype but who also may be considered sources of Torah. This paper attempts, first, to prove that certain women in the Talmudic period could be, and were, sources of Torah, and, second, to explore rabbinic attitudes to such women. By way of background, however, it is necessary first to investigate rabbinic attitudes towards women and study and to define what exactly is meant by "sources of Torah."

In many instances in the Talmud, the sages make clear their attitudes concerning women and study. In the tractate *Kiddushin*, for example, they expound the following three points: women have no obligation to teach others; women have no obligation to teach themselves; and others have no obligation to teach women.<sup>1</sup> When set in the context of a society that believed the intellect to be an instrument of sanctification, and study to be one of the most sanctified of acts, these statements reveal a good deal, for women, being not obligated to study and, at times, prohibited from so doing, were thus deprived of participation in one of the most hallowed expressions of faith.

In supplementation of the above, *Kiddushin* 34a exempts women from all positive *mizvot* limited to time— including the obligations to

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1. *The Babylonian Talmud: Tractate Kiddushin*, translated by H. Freedman, edited by I. Epstein (London: The Soncino Press, 1966) 29b.

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wear phylacteries and to pray three times daily.<sup>2</sup> Women were also freed from the obligation to make pilgrimages and to dwell in a *sukkah*, and because women were not obligated to perform certain rituals, the culture did not permit them to act as representatives of the community by leading a religious service.

The three positive *mizvot* that fell to women and that are generally considered the woman's realm are *niddah* (the laws of family purity), *hallah* (the separation of dough to prepare loaves of bread), and the lighting of the Sabbath candles. Women were obligated to know the laws pertaining to such duties. Centered on the family and the home, these *mizvot* illustrate the different modes of experience that men and women participated in and for which they were educated.

That women were not obligated to pray is significant. Both as a movement towards God and a movement away from the narrowness of human self-interest, prayer stands at the center of spiritual living. Again, however, the male population seemed to have a monopoly on spiritual interests—for the quality of, and opportunity for, spiritual enrichment offered to men was not offered to women. Groomed to participate in a wholly different facet of life, women in this context were perhaps understandably considered, “temperamentally light-headed” (*Kiddushin* 80b), as well as trivial, ignorant beings wasting their husbands’ time. Women, of course, could not make a dent in such opinions because that most significant of endeavors, sacred study, was closed to them. Whatever merit women earned had to come in a different way.

In the Talmud, in *Berakhot*, Rav and Rabbi Hiya engage in discussion. Rav asked Rabbi Hiya: “What is the merit of the woman in the Torah?” Rabbi Hiya answered: “Their merit arises from the fact that they take their children to their places of study and that they receive their husbands when they return home.”<sup>3</sup> Thus, by preparing children for their education and by helping to further their husbands’ studies women contributed to, and functioned in, the community. Through such actions they acquired spiritual merit and, no doubt, women who conformed to their roles gained respect as well. Within the family, the woman may have had a revered and noble task to fulfill, or, as the apologists will tell us: “separate but equal.” The crux of Rabbinic Judaism, however, clearly remained centered on communal prayer and study, pursuits almost exclusively reserved for men.

Throughout Jewish history, certain women did, of course, break out of the traditional mold and assume responsibilities associated with males; for example, the prophetesses Deborah and Huldah. Rabbinic reaction to these Biblical women offers information about the rabbis’ own views towards women who departed from the accepted model. The etymologi-

2. Ibid., 34a.

3. B. *Berakhot* 17.

cal coincidence that in Hebrew *Devorah* is the word for bee and *Huldah* the word for weasel moved the rabbis to comment:

R. Nahman said: Haughtiness does not befit women. There were two haughty women, and their names are hateful, one being called hornet and the other a weasel. Of the hornet, it is written, "And she sent and called Barak" instead of going to him. Of the weasel it is written "Say to the man" instead of "Say to the king."<sup>4</sup>

Louis Ginzberg, quoting a rabbinic source, says:

Eminence is not for women; two eminent women are mentioned in the Bible, Deborah and Huldah, and both proved to be of a proud disposition . . . This unpleasant feature of their character is indicated by their ugly names.<sup>5</sup>

The images of self-confidence projected by Deborah and Huldah apparently challenged rabbinic conceptions of womanhood. For the rabbis did not rest easy with a proud or eminent woman.

Huldah's success raised problems for the rabbis in yet another way, for in seeking out her prophecy, Josiah bypassed the great male prophet, Jeremiah, an action disturbing in its implication that the woman Huldah could prophesy better than the man Jeremiah. To come to terms with this fact, the rabbis assumed that Josiah went to Huldah, not for her brilliance or talent, but precisely because she was a woman. They speculated that Josiah, desiring as compassionate a prophecy as possible, felt it could best be given to him by a woman.<sup>6</sup> The story highlights two rabbinic attitudes: first, women by nature are alleged to be more compassionate than men (again the stereotype of a receptive and family-centered female); and second, a woman's character is composed first and foremostly of "feminine" characteristics as defined by the rabbis. In other words, a woman, even as exceptional a one as Huldah, must be seen through a screen of female qualities. The rabbinic commentaries see Huldah primarily as the "compassionate woman" and their interpretation filters Huldah's talent through her femininity.

Despite their emphasis on Huldah's feminine qualities, the rabbis nonetheless recognized her intellectual capacities, as evidenced by their extensive commentary on the following passage, 2 Kings 22:14, in which Huldah is introduced.

So Hilkiyahu the priest and Ahikam and Akhbor and Shafan and Asaya went to Huldah the prophetess, the wife of Shallum the son of Tikva the son of Harhas, keeper of the wardrobe; now she dwelt in Jerusalem in the mishneh (in the second quarter) and they spoke to her.

The rabbinic exegesis of this verse is formulated by the medieval commentators, Rashi and the Rambam (Rabbi Levi ben Gershon). The word

4. B. *Megillah*, 14b.

5. Louis Ginzberg, *Legends of the Jews* (Philadelphia: Jewish Publication Society, 1912), Vol. 6, p. 377.

6. Ibid., Also, see Rashi on 2 Kings 22:14.

in the verse, *mishneh*, has a double meaning. In the *Tanakh* it is used to designate the “second quarter of the city” or some geographical location:

“Bamishneh (in the second quarter):” In the house of Ulpana there is a gate in the courtyard whose name is the Huldah Gate as mentioned in the Tractate *Midot*. And there are those who explain that the “mishneh” was outside the wall between two walls and it is the “mishneh of the city.”<sup>7</sup>

The word *bamishneh* was also associated with the root “to teach.” Rashi, on the verse in 2 Kings comments:

“*Bamishneh*.” She taught the oral law to the elders of the generation and that is the *mishneh*.

She taught from the beginning to the end of Deuteronomy (*Mishneh Torah*). And all of the extra words in the Torah, she exegeted in public. And she revealed the punishments and the exiles that would be multiplied for those who transgress the secrets and the hints of the Torah.

The Ralbag cites Targum Jonathan<sup>8</sup> on this verse: “‘And she sat in Jerusalem in the *mishneh*’: Targum Jonathan translates ‘in the *mishneh*’ as ‘in the house of study.’” This information, therefore, draws a slightly different picture of Huldah, that of a brilliant source of Torah, a teacher, an explicator of verse, and a prophetess.

In the light of this emphasis, still other commentaries further clarify her portrait, for they try to come to terms with Huldah’s prophetic role itself. In answer, they suggest that the righteousness of Shallum, Huldah’s husband, was rewarded through his wife’s powers of prophecy.<sup>9</sup> Huldah was thus made into a prophetess, not on her own merit, but on her husband’s. Her exegetical and pedagogical abilities took second place in her success to her dependence on a man, her husband. However great and brilliant a human being she might have been, Huldah’s reflection in rabbinic literature took its colors from the female stereotype which the culture had mapped out.

In working toward a definition of the term “source of Torah,” several elements must be considered, many of them functions associated with a rabbi of the Talmudic period: exegesis, the performance of rituals, and teaching, as well as the possession of the “power of Torah,” the embodiment of revelation in action, and leadership of the spiritual community. In fulfilling these functions, as Jacob Neusner puts it, “the rabbis believed that they themselves were projections of heavenly values onto earth.”<sup>10</sup> “The rabbis thus conceived that on earth they studied

7. Rashi, commenting on 2 Kings 22:14.

8. This source is of debatable date, but surely no later than the seventh century, though drawing on sources that are much earlier. (*Encyclopedia Judaica*, [Jerusalem: Keter Publishing House, 1972], Vol. 4, p. 846).

9. Ginzberg, Vol. 4, p. 216.

10. Jacob Neusner, *There We Sat Down* (Nashville: Abingdon Press, 1972), p. 74.



Torah just as God, the angels, and Moses our Rabbi did in heaven.”<sup>11</sup> The rabbis emerge as sources of Torah on earth.

With these basic rabbinic attitudes towards women and study providing a common ground, we may now consider exceptions to the rule: women who can be considered sources of Torah. Beruriah and the wife of Abba Hilkiyah serve as ready examples.

Beruria, who lived in the second century C.E. in Palestine, gained fame “as the only woman in talmudic literature whose views on halakhic matters are seriously reckoned with by the scholars of her time.”<sup>12</sup> As the daughter of Hanina ben Teradyon, an illustrious rabbi martyred in the Bar Kokhba War of 135, and the wife of Meir, a renowned rabbi of the period, her highly unusual, superb education can be accounted for.

The units of tradition concerning Beruriah can be divided into those which deal only with her and those in which both Beruriah and Meir are present. This analysis begins with the materials in which only Beruriah appears.

As an attestation to Beruriah’s great learning, *Pesahim* 62b states:

R. Simlai came before R. Johanan (and) requested him, “Let the master teach me the Book of Genealogies.” Said he to him, “Whence are you?” He replied, “From Lod.” And where is your dwelling?” “In Nehardea.” Said he to him, “We do not discuss it either with the Lodians or with the Nehardeans, and how much more so with you, who are from Lod and live in Nehardea.” But he urged him and he consented. “Let us learn it in three months,” he proposed. (Thereupon he took a clod and threw it at him, saying, “If Beruriah, wife of R. Meir (and) daughter of R. Hanina ben Teradyon, who studied three hundred laws from three hundred teachers in one day could nevertheless not do her duty in three years, yet you propose (to do it) in three months!”<sup>13</sup>

This pericope makes three important statements about Beruriah: her brilliance as a student “who studied three hundred laws from three hundred teachers in one day;” her example of intense scholarly application; and her unfulfilled duty in learning the Book of Genealogies.

Since R. Simlai was a first generation Amora and lived in the second half of the third century C.E.<sup>14</sup>, the composition of this unit must date from at least a full hundred years after Beruriah’s death, at which time we can assume that stories still circulated about her brilliance and ability. R. Simlai, himself, considered to be a renowned authority on aggadah (*Ber.* 32a-b), was a respected and prominent member of Judah II’s entourage. Significantly, therefore, Beruriah, a woman, is held up as an example to an esteemed male rabbi, for the rabbinic impression of Beruriah recorded in this passage is of a remarkable, astute, and dedicated scholar with considerable motivation to learn.

11. *Ibid.*, p. 78.

12. *Encyclopedia Judaica*, Vol. 4, p. 701.

13. *B. Pesahim*, 62b.

14. *Encyclopedia Judaica*, Vol. 14, p. 1574.

The observation that Beruriah “did not fulfill her obligation” in study also carries some weight, for, from the materials examined previously (*Kiddushin* 29b), she clearly should not have had any such obligation. Understandably, Rashi himself found difficulty with the nature of Beruriah’s obligation and had to interpret “*lo yaztah yidei hovatah*” by departing from normal usage. Usually, this expression carries legal connotations: for example, if someone did not say the *Shema* at the proper time, one would say, “*lo yazah yidei hovo*,” he has not fulfilled his obligation. This expression would apply to any *mizvah* that was not properly fulfilled. Rashi, however, could not bring himself to interpret the expression in its legal idiom (because this would presuppose that Beruriah had a legal obligation to study), and, instead, asserted that Beruriah felt a duty towards a self-imposed but unfulfilled task.

To interpret this passage as it would generally be understood (in the legal sense) raises certain questions. If it presupposes that Beruriah did have an obligation, what was the nature of that obligation? Could second-century women take on obligations to study, as could any ordinary man? Or, perhaps, were second-century women permitted to occupy positions that would presuppose an obligation to study?

Beruriah was also an acknowledged teacher, as *Eruvin* 53b-54a states:

Beruriah once discovered a student who was learning in an undertone. Rebuking him, she exclaimed, “Is it not written, ‘ordered in all things and sure?’ If it (the Torah) is ‘ordered’ in your 248 limbs it will be ‘sure,’ otherwise it will not be ‘sure.’”<sup>15</sup>

Beruriah here shows herself as a Biblical exegete with a keen understanding of the text. Taking a verse out of its literal context, she teaches from it and applies it to a living situation. Not only is one impressed by Beruriah’s exegetical ability but one realizes her very real interest in her students. Warmth and understanding mingle with rebuke, and reveal the personality of a master-rebbe seriously concerned with a student’s spiritual and educational welfare.

The setting of this pericope and of the one following, among other units in *Eruvin* dealing with education, reveals that the redactors of the Talmud seemed to recognize Beruriah’s teaching abilities. Further, by way of inference, this pericope hints that Beruriah felt a personal obligation to teach, despite the fact that as a woman she was exempt from such an obligation (*Kiddushin* 29a). In *Eruvin* 53b Beruriah again appears taken up with the moral welfare of an individual:

R. Jose the Galilean was once on a journey when he met Beruriah. “By what road,” he asked her, “do we go to Lydda?” “Foolish Galilean,” she replied, “did not the sages say thus: ‘Engage not in much talk with women?’ You should have asked; ‘By which to Lydda?’”<sup>16</sup>

15. B. *Eruvin*, 53b-54a.

16. Ibid.

In refusing to exchange idle works with R. Jose, Beruriah lives the words of Torah, and her actions conform to rabbinic teachings. Again showing herself as a teaching figure, Beruriah seems concerned with instructing R. Jose and demonstrating to him his violation of a rabbinic precept.

One can also interpret Beruriah's encounter with R. Jose to mean something a bit different from the above. For, the verse which she quotes to him, "Engage not in much talk with women," implies that time spent talking with women (those frivolous creatures, prone to gossip) is time wasted. However, certainly R. Jose would not have wasted his time in discussion with scholarly Beruriah. Thus, it has been suggested by Robert Gordis<sup>17</sup> (and, I believe, rightly so), that this passage makes sense only on the assumption that Beruriah is speaking ironically. In this way Beruriah expresses her opposition to the rabbinic dictum against much talk with women. One might conjecture that she strongly felt the disabilities of her position and resented the restrictions placed on her sex. Beyond this, the verse which Beruriah quotes to R. Jose is by Jose b. Johanan,<sup>18</sup> one of the first pairs of the earliest Tannaim. Significantly, in quoting R. Jose b. Johanan's tradition, Beruriah proves that she knew Talmud as well as Bible.

In *Berakhot* 10a, Beruriah again stands up favorably in comparison to a man—a position she repeatedly occupies, a position never marked by comparison with other women. Qualities such as her intellectual ability, dedication to learning, and commitment to teaching, overshadow many of the stereotypes associated with women and were recognized by the rabbis for their superior merit. By their very mode of redacting materials concerning Beruriah (placing her in these comparative positions), the rabbis seem to acknowledge that her actions embody Torah. Perhaps they sense a rabbinic kinship, for, in acting out paradigmatic examples, Beruriah acts as a rabbi to these men. Thus, in *Berakhot* 10a:

A certain Min (sectarian) said to Beruriah: "It is written 'Sing, O barren, thou didst not bear' (Isa. 54:1). Because she did not bear is she to sing?" She replied to him: "You fool! Look at the end of the verse where it is written, 'For the children of the desolate shall be more than the children of the married wife, saith the Lord.' But what then is the meaning of 'a barren that didst not bear?' Sing, O community of Israel, who resembest a barren woman, for not having born children like you for Gehenna."

Beruriah's interpretive skills and sharp wit are favorably cited in this pericope, as she shows the man his shallowness and lack of exegetical perception. By retracing the steps of her own insightful interpretation, Beruriah once more demonstrates both her own pedagogy and her

17. Robert Gordis, "Valeria Beruriah," *Universal Jewish Encyclopedia*, (New York: The Universal Jewish Encyclopedia, Inc., 1940), Vol. 2, p. 243.

18. With respect to the dating of this unit, the conversation between R. Jose and Beruriah raises no problems, since R. Jose the Galilean was a second generation Tanna, (90-130 C.E.) whose lifetime easily coincides with Beruriah's.

constant concern with educating individuals. Furthermore, the principle upon which Beruriah's interpretation rests, "Look at the end of the verse," became an exegetical rule current among later sages of the Talmud.<sup>19</sup> The sages, therefore, must have looked with favor upon her skills and methodology.

The following three pericopae, in which both Beruriah and Meir appear, offer important biographical facts and characteristics of Beruriah through the details of their relationship. *Berakhot* 10a states:

There were once some highwaymen in the neighborhood of R. Meir who caused him a great deal of trouble. R. Meir accordingly prayed that they should die. His wife Beruriah said to him; "How do you make out (that such a prayer should be permitted)? Because it is written: 'Let *hatta-im* (sins) cease?' Is it written '*hot'im*' (sinners)? It is written '*hatta-im*' (sins)!' Further, look at the end of the verse: 'and let the wicked men be no more.' Since the sins will cease, there will be no more wicked men! Rather pray for them that they should repent, and there will be no more wicked." He did pray for them, and they repented.

In this comparative situation with a male, Beruriah again emerges favorably. Yet, the element of mutual respect sets this encounter strongly apart from those recorded with other males in previous quotations.

By her more astute exegesis, Beruriah gives the lie to Meir's actions in the situation: she teaches him by a careful examination of her line of reasoning and shows him his error. In one sense, Beruriah adapts her manner to Meir. While in previous passages, when she found men at fault, she reacted harshly, here she neither calls Meir a fool nor treats him with condescension. Instead, Beruriah patiently teaches him and treats him with the utmost respect, as Meir does her. Apparently holding her abilities in high regard, Meir listened to her interpretation and changed his course of action.

Himself a rabbi of some renown, Meir has been termed "one of the leaders of the post Bar Kochba generation. Essentially a halakhist, he played a decisive role in the development of the Mishnah,"<sup>20</sup> and was granted the epithet "holy" because he not only preached standards of purity but also carried them out. Seen in this light, the high opinions of Meir in the rabbinical world only enhance the already impressive image of Beruriah drawn in this pericope.

Another passage in which Beruriah appears with Meir is taken from the late aggadic work, Midrash on Proverbs 31:1.<sup>21</sup>

When two of their sons died on Sabbath, Beruriah did not inform Meir of their children's death upon his return from the academy in order not to grieve him on the Sabbath! Only after the *Havdalah* prayer did she broach the matter, saying "Some time ago a certain man came and left something in my trust, now he has called for it. Shall I return it to him

19. *The Jewish Encyclopedia* (New York: Funk and Wagnalls Co., 1902), Vol. 3, p. 109.

20. *Encyclopedia Judaica*, Vol. 12, p. 1240.

21. *Ibid.*, p. 1512. (The Midrash on Proverbs was composed in the years 640–900 C.E.)

or not?" Naturally Meir replied in the affirmative, whereupon Beruriah showed him their dead children. When Meir began to weep, she asked: "Did you not tell me that we must give back what is given on trust? 'The Lord gave, and the Lord hath taken away.'"<sup>22</sup>

This pericope strikingly highlights, among other things, Beruriah's profound belief in God and His ways: "The Lord gave and the Lord hath taken away." All of her talents and abilities, exegetical and interpretive, are directed towards justifying God's action to Meir. Even after her two sons die, she refuses to break the Sabbath spirit and inform Meir of the tragedy, but, rather, waits until Meir has performed *havdalah*. Through her dedication to observance, therefore, Beruriah embodies Torah. Furthermore, the passage interestingly reverses the expected male-female roles. While Meir weeps, Beruriah plays the part of the strong, righteous "masculine figure" by expounding a verse from Scripture and bringing it in touch with the reality of their immediate situation.

In a comment of Rashi to a passage in *Avodah Zarah* directly following the story of the martyrdom of Beruriah's father, Hanina ben Teradyon, still different attitudes towards Beruriah come to the fore. Her sister had been placed in a brothel and Beruriah said to her husband, R. Meir, "I am ashamed to have my sister placed in a brothel" (*Avodah Zarah* 18b). The passage then goes on to detail R. Meir's rescue of the girl and its ramifications in his life. The Romans ran after him and "He then arose and ran away and came to Babylon. Some say it was because of that incident that he ran to Babylon; others say because of the incident about Beruriah" (*Avodah Zarah* 18b). In explanation of Rabbi Meir's flight to Babylon, Rashi relates the following legend of unknown origin:

Once Beruriah scoffed at the Rabbinical saying, "Women are light-minded" (*Kiddushin* 80b), and her husband warned her that her own end might yet testify to the truth of the words. To put her virtue to the test, he charged one of his disciples to endeavor to seduce her. After repeated efforts she yielded, and then shame drove her to commit suicide. R. Meir, tortured by remorse, fled from his home.

Rashi's comment indicates that, at some point, attitudes toward Beruriah began to change. Opinion turned sufficiently against the woman as a source of Torah allegedly to cause Beruriah to kill herself and to cause Meir to run away to Babylon. The supposition that Beruriah was enticed by one of Meir's students is shocking in the face of every impression we have thus far gleaned of her. Beruriah never appears light-minded and her emotional strength is certainly well attested to. But even Beruriah could not escape her sex and, however successful or learned, she would still be looked on as a "female trespasser." In a certain light, Beruriah can be regarded as an early feminist, for she seemed to resent the society's systematic definition of women and the low opinion of their mental fac-

22. Ibid., Vol. 4, p. 701.

ulties held by certain rabbis. Both her sarcastic remark to R. Jose, "Engage not in much talk with women" (*Eruvin* 53b) warning him not to waste his time speaking with her, and her ridicule of the rabbinical saying, "women are light-minded" (*Avodah Zarah* 18b), point in this direction.

Responding to her derision of the sages' attitudes towards women, Meir warns Beruriah that she herself (like all women) is flawed with feminine weakness and that "her own end might yet testify to the truth of the words." The implication is that her "feminist attitudes" play a part in her bad end, and such an interpretation would be one way of accounting for the otherwise unexplained negative elements in the later tradition's attitude towards her.

Yet, despite Beruriah's potentially subversive influence, the rabbis did recognize her as a source of Torah. The documents bear witness to her able exegesis and skillful interpretations, to her piety and observance of the law. The Tosefta records Beruriah as settling questions of Jewish law.<sup>23</sup> By including her scholarly accomplishments in the Talmud, the rabbis recognized that women can, indeed, have a productive place in the world of scholarship.

In many ways, Beruriah does not essentially differ from the male rabbis around her, a fact that the redactors carefully note. Yet, according to the tradition which generated Rashi's comment, Beruriah's downfall derives from her feminine weakness. If Beruriah, perhaps the most brilliant and moral woman of Talmudic Judaism, could fall, how much more easily could ordinary women. If, therefore, we commend the rabbis for painting such an admirable portrait of a woman, we must not forget to keep an eye fixed on how the later commentators were able to manipulate that portrait for their own ends.

Abba Hilkiyah's wife is another woman who may be considered a source of Torah in rabbinic literature. Her name appears only once, in *Taanit* 23a-23b. Of an aggadic and historical nature, the unit describes how two scholars have come to Abba Hilkiyah,<sup>24</sup> the grandson of Hone the circle-drawer, to ask him to pray for rain. So he and his wife "went up to the roof; he stood in one corner and she in another; at first the

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23. In Tosefta, *Kelim*, *Baba Mezia*, 1:6, Beruriah is acknowledged as settling a question of Jewish law and is taken seriously by one of her scholarly contemporaries. "Beruriah says: 'A door bolt may be removed and dragged along from one door and hung on another on the Shabbat.' When these words were said before R. Judah (alt. Joshua), he commented, 'Nicely has Beruriah said.'" Interestingly enough, Mishnah *Kelim* 11:4 is extremely similar to this passage from the Tosefta, except that Beruriah's name is not present. If there is a relationship between the two quotations we must ask why the Mishnah credits Beruriah's decision to someone else. Does the Mishnah delete her name because she is a woman?

24. Abba Hilkiyah is referred to in one other place in the Talmud. "And worketh righteousness as Abba Hilkiyah." (B. *Makkot* 24a).

clouds appeared over the corner where his wife stood."<sup>25</sup> When questioned by the scholars why the clouds first appeared in the corner where his wife stood and only then in his corner, he replied,

Because a wife stays at home and gives bread to the poor which they can at once enjoy, whilst I give them money which they cannot at once enjoy. Or perhaps it may have to do with certain robbers in our neighborhood; I prayed that they might die, but she prayed that they might repent (and they did repent).<sup>26</sup>

Abba Hilkiyah's wife's attempts at making rain draw more response than do those of the righteous Abba Hilkiyah. An interesting situation, in the light of Jacob Neusner's documentation that to the rabbis "There was clearly some relationship between mastery of Torah and ability to make rain."<sup>27</sup> The text may suppose her a greater master of Torah and more righteous than he. Perhaps because her mastery of Torah surpassed that of Abba Hilkiyah and she arrived at a new insight into the situation, she was rewarded with a superior ability to make rain. For the text implies that the wife knew and understood the verse about sinners upon which her actions are based. Abba Hilkiyah, on the other hand, lacking a thorough understanding of the verse, did not act correctly.

The striking resemblance to the Beruriah and Meir pericope (*Ber.* 10a), where Meir also prayed, as Abba Hilkiyah did, for the robbers' death is significant. For the sentence

"I prayed that they might die, but she prayed that they might repent (and they did)"

is not consistently found in all extant versions of this tractate. Henry Malter has suggested that the line was added with *Berakhot* 10a in mind,<sup>28</sup> thus indicating that the redactors found a kinship between Abba Hilkiyah's wife and Beruriah. There certainly are similarities between the two women. Both are depicted with their husbands, who were well respected in their various circles. Both pericopae are marked by the mutual respect of the couples, and in each of the units the women outshine the men.

Although Beruriah and Abba Hilkiyah's wife do resemble one another, that ought not obscure the differences between them. In *Berakhot* 10a, Beruriah, in her usual pedantic manner, advised Meir to change his prayers and he did, but she received no known reward for her insightful act. Abba Hilkiyah's wife also found her husband's prayers wrong but because she was not interested in teaching her husband the "right way,"

25. B. *Taanit*, 23b.

26. *Ibid.*

27. Neusner, *There We Sat Down*, p. 83.

28. Henry Malter, *The Treatise Taanit of the Babylonian Talmud* (New York: The American Academy for Jewish Research, 1930), p. 101.



we have no record of her train of thought. By contrast with Beruriah, Abba Hilkiyah's wife does not advise her husband to change his prayers, but, rather, she herself prays for the robbers to repent. Her initiative brings its own reward.

Abba Hilkiyah gives another reason to explain his wife's successful rainmaking.

Because a **wife stays at home and gives bread** to the poor which they can enjoy at once, whilst I give them money which they cannot at once enjoy.

This statement implies that, as a reward for their greater involvement and sensitivity to the poor, women's prayers are more effective than are those of men.

Abba Hilkiyah's wife, as a source of Torah, shows herself different from Beruriah. Involved in ritual, and a mistress of "white magic" in her ability to make rain, she is a very positively drawn portrait of a woman. The differences between the actions of Abba Hilkiyah's wife and of Beruriah exemplify the different functions which they fulfill as sources of Torah: Beruriah a teacher and exegeter and Abba Hilkiyah's wife a charismatic and independent rainmaker.

From these two examples of female sources of Torah in the Talmudic period, therefore, we can see that women could fulfill the functions of both scholar and ritualist, if only in the most unusual situations. As colorful and rare as are Beruriah and Abba Hilkiyah's wife, they in no way change the status of Jewish women. They *do*, however, attest to the capability of the tradition to recognize and respect such women.

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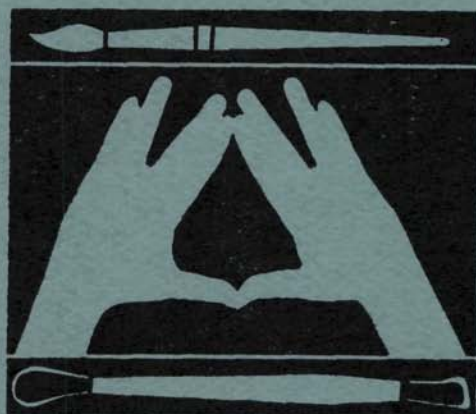
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